



**REQUEST FOR PROPOSAL #10-0-2009/SB
BAYFRONT REDEVELOPMENT PLAN CONSULTANT SERVICES**

Purchasing & Contracts Division
120 Malabar Road, SE
Palm Bay, FL 32907-3009

ISSUE DATE: 01/29/2009
Page 1 of 32

**PROPOSALS TO BE RECEIVED NO LATER
THAN 5:00 PM ON TUESDAY, 02/24/2009**

PURCHASING DIVISION CONTACT:

PHONE NUMBER: (321-952-3424
FAX: (321)952-3401
E-MAIL: blairs@pbfl.org

**PROPOSALS WILL BE OPENED AT 3:00 PM
ON WEDNESDAY, 02/25/2009**

PLEASE COMPLETE AND SUBMIT THIS FORM WITH YOUR PROPOSAL

Proposer Name:	Discount for total award of proposal: _____
Address:	Proposals are firm for 90 days Yes___ No___ Other_____
City, State, Zip:	Do you accept Visa? <input type="checkbox"/> YES <input type="checkbox"/> NO
Phone Number:	List of Deviations (if any) attached Yes___ No___
Fax Number:	If submitting a "NO PROPOSAL", state reason: _____
E-Mail Address:	
FEIN Number:	

Proposal packages shall be mailed or hand-delivered to the Office of Purchasing & Contracts Division, located at the CITY HALL, 120 Malabar Road SE, Palm Bay, Florida 32907, Room 123. Receipt of Proposals will be officially closed after time and date identified above. Proposals received after the specified time and date will not be accepted. The City will not be responsible for mail delays, late or incorrect deliveries. The time/date stamp located in the Office of Purchasing & Contracts Division will be the official authority for determining late Proposals.

One (1) original (MARKED "ORIGINAL") and five (5) copies of all Proposal sheets and required attachments shall be executed and submitted in a sealed envelope. Proposer shall mark Proposal envelope, RFP No. 10-0-2009/SB, Bayfront Redevelopment Plan Consultant Services" Proposer's name and return address shall be clearly identified on the outside of the envelope.

Authorized Signature

Title (typed or printed)

Printed Name & Title

Date

CHECK LIST OF MINIMUM REQUIRED SUBMITTALS

For the proposal to be considered, one (1) original **marked "ORIGINAL"**, and five (5) copies of the proposal be received by the City of Palm Bay no later than 5:00 P.M. on Tuesday, February 24, 2009.

NOTE: Proposals will not be opened on the same date and time as identified above. The proposal opening will be conducted in a public meeting at 3:00 P.M. on Wednesday, February 25, 2009. The location of the opening will be the Purchasing & Contracts Division, Conference Room, 120 Malabar Road, SE, Palm Bay, FL 32907.

This "Standardized Check List" has been provided to assist the Proposer with the submission of their Proposal package. This Check List cannot be construed as identifying all required submittal documents for this project. Proposers remain responsible for reading the entire Proposal document to insure that they are in compliance.

The City, in its sole discretion, reserves the right to reject any and all Proposals, to waive any and all formalities and reserves the right to disregard all nonconforming, non-responsive or incomplete Proposals. The City specifically reserves the absolute right to determine the seriousness of any proposer's failure to specifically conform to the requirements of the proposal document. Proposers cannot utilize the City's determination of the seriousness of any specific non-conformance as a basis to protest the award of any proposal. Proposals may be considered subject to rejection if in the sole opinion of the City; there is a serious omission, unauthorized alteration of form, an unauthorized alternate Proposal, incomplete or unbalanced unit price, or irregularities of any kind. The City may reject, as non-responsive, any or all Proposals where Proposers fail to acknowledge receipt of Addenda as prescribed.

Item #	SUBMITTALS	RFP Page #('s)	Proposer Response		
			Included		
			YES	NO	N/A
1	Proposer has completed, signed (blue ink) and included Cover Sheet	1			
2	Proposer has completed, signed (blue ink) and included the Check List of Minimum Required Submittals – (PAGE 2 & 3)	2 & 3			
3	Proposer has provided One Original and five (5) copies of their proposal	1 & 2			
4	Proposer has included their Title Page	11			
5	Proposer has provided a signed Transmittal Letter	11			
6	Proposer has provided their Executive Summary	11			
7	Proposer has provided their General Information	11			
8	Proposer has included a Table of Contents	11			
9	Proposer has included their Qualifications for this project	11 & 13			
10	Proposer has included their Technical Proposal for this project	12 & 13			
11	Proposer has completed, signed (blue ink) and included all Proposal Forms (Cost Proposal)	16 & 17			
12	Proposer has confirmed that their proposal reflects all Addenda for this project (all Addenda will be posted to Demandstar.com and PublicPurchase.com for notification and retrieval	16			

Item #	SUBMITTALS	RFP Page #('s)	Proposer Response Included		
			YES	NO	N/A
13	Proposer has completed, signed (blue ink) and included their Identical Tie Proposal sheet with signature – (if applicable)	18			
14	Proposer has included a copy of business tax receipt (occupational license)				
15	Proposer has completed and included their Local Preference Certification Statement (Not Required for Class “D”)	19			
16	Proposer has read, understood, and submitted all additional required documentation for proposal evaluation.				

Authorized Signature

Company

Printed Name & Title

Date

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SECTION 1

INTRODUCTION

The City of Palm Bay (hereinafter referred to as "City") is requesting sealed Proposals from qualified firms, organizations and individuals with demonstrated expertise in updating and modifying redevelopment plans, pursuant to the Community Redevelopment Act, Chapter 163, Part III (Florida Statutes), to submit qualifications, costs and fee schedule for the update of the City's Bayfront Redevelopment Plan.

PROPOSAL DUE DATE & TIME: TUESDAY, February 24, 2009 AT 5:00 P.M. Proposal packages shall be mailed or hand-delivered to the Office of Purchasing & Contracts Division, located at CITY HALL, 120 Malabar Road SE, Palm Bay, Florida 32907, Room 123. Proposals are to be received NO LATER THAN 5:00 P.M. after which time receipt will officially be closed. Proposals received after the specified time and date will not be accepted. The City will not be responsible for mail delays, late or incorrect deliveries. The time/date stamp located in the Office of Purchasing & Contracts Division will be the official authority for determining late Proposals.

NOTE: Proposals will not be opened on the same date and time as identified above. The proposal opening will be conducted in a public meeting at 3:00 P.M. on, Wednesday, February 25, 2009. The location of the opening will be the Purchasing & Contracts Division, Conference Room, 120 Malabar Road, SE, Palm Bay, FL 32907.

All Proposal sheets and required attachments must be executed and submitted in a sealed envelope. Proposer shall mark Proposal envelope, RFP No. 10-0 2009/SB, "Bayfront Redevelopment Plan Consultant Services". Proposer's name and return address should be clearly identified on the outside of the envelope.

These documents constitute the complete set of terms and conditions, specification requirements, and Proposal forms. Any additional information should be attached to this Proposal format, or the Proposal may be disqualified. Proposal Sheet(s) with an original signature in blue ink, signed by an authorized company representative shall be submitted to validate the Proposal price.

Proposer shall submit six (6) complete sets (one (1) original (marked "ORIGINAL"), and five (5) copies) of their Proposal, complete with all supporting documentation. Proposals submitted by facsimile (fax) or electronically will NOT be accepted. Submittal of a Proposal in response to this Request for Proposal constitutes an offer by the Proposer. Proposals, which do not comply with these requirements, may be rejected at the option of the City. It is the Proposer's responsibility to ensure that Proposal submittals are in accordance with all addendums issued. Failure of any Proposer to receive any such addendum or interpretation shall not relieve such Proposer from its terms and requirements. Addendums are available online at <http://www.demandstar.com>, and www.publicpurchase.com. Both links can be obtained through the City of Palm Bay Web Page <http://www.palmbayflorida.org>, under the Finance Department, Purchasing Division.

Proposals not submitted on the enclosed Proposal Form may be rejected, unless stated otherwise in the Proposal documents. If a Proposer wishes not to submit a Proposal, complete and return the "NO PROPOSAL RESPONSE" on Page 1.

For information concerning procedure for responding to this Request for Proposal (RFP), contact Susan Blair, Contracts Administrator, Purchasing & Contracts Division at (321) 952-3424. Such contact is to be for clarification purposes only. Material changes, if any, to the Scope of Services, or Proposal procedures will only be transmitted by written addendum.

All questions about the meaning or intent of the Proposal Documents shall be submitted in writing and directed to the City of Palm Bay, 120 Malabar Road SE, Palm Bay, FL 32907, Attention: Susan Blair, Contracts Administrator Purchasing & Contracts Division. Questions may also be sent via fax at (321) 952-3401 or e-mail at blairs@pbfl.org. Questions received less than seven

(7) calendar days prior to the date for opening of the proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect and shall not be relied upon by Proposers in submitting their proposals.

STANDARD TERMS & CONDITIONS

ACCEPTANCE AND REJECTION - The City reserves the right to accept or reject any and all Proposals, and to accept the Proposal which best serves the interest of the City of Palm Bay. The City may award sections individually or collectively whichever is in its best interest.

ADDENDUM AND AMENDMENTS TO REQUEST FOR PROPOSAL: If it becomes necessary to revise or amend any part of this Request for Proposal, the City's Purchasing & Contracts Division will furnish the revision by written Addendum to all prospective proposers who are recorded with the City as having received an original Request for Proposal. Addenda information will be posted online at <http://www.demandstar.com>, and www.publicpurchase.com. Both links can be obtained through the City of Palm Bay Web Page <http://www.palmbayflorida.org>, under the Finance Department, Purchasing Division. Proposers are responsible to check any of these locations for updates.

AWARD - Award will be made to the lowest and best responsible offeror whose Proposal is determined by the City, to be in the best interest of the City.

COMMITTEE MEETINGS/PRESENTATIONS INFORMATION: The Notice of Committee Meetings/Presentations will be posted at least seventy-two (72) hours in advance of such meetings/presentations. Proposers are responsible to check the following locations for updates on this proposal's status: on the bulletin board located in the main lobby of the City Hall building at 120 Malabar Road SE, Palm Bay, FL 32907, at <http://www.demandstar.com>, and at www.publicpurchase.com. Links to both sites are available through the City's Web Page <http://www.palmbayflorida.org>, under the Finance Department, Purchasing Division.

CONFLICT OF INTEREST - The Proposer certifies that this Proposal has not been arrived at collusively or otherwise in violation of federal, state or local laws.

DEVIATION FROM SPECIFICATION - Any deviation from specifications must be clearly stated, explained in detail and accepted by the City in writing. Otherwise items offered are expected to be in strict compliance with specifications and the successful Proposer shall be held accordingly.

DISCRIMINATORY VENDOR LIST: An entity or affiliate placed on the Discriminatory Vendor List shall not submit a Proposal for a contract to provide goods or services to a public entity, shall not submit a Proposal on a contract with a public entity for the construction or repair of a public building or perform any public work, shall not submit Proposals for leases of real property to a public entity, shall not award or perform work as a contractor, supplier, subcontractor, or consultant under any contract with any public entity, and shall not transact business with any public entity (Section 287.134(3)(d), Florida Statute).

ECONOMY OF PREPARATION: The proposals should be prepared simply and economically, providing a straightforward, concise description of the proposers' ability to fulfill the requirements of the proposal.

INFORMALITIES - The City of Palm Bay reserves the right to both waive any informality in Proposals and to determine, in its sole discretion, whether or not informality is minor.

INFORMATION AND LITERATURE - Proposers are to furnish all information and literature requested. Failure to do so may be cause for rejection.

INTERPRETATIONS - Any questions concerning conditions and specifications shall be directed to the designated buyer. Interpretations, that may affect the eventual outcome of this Proposal,

will be furnished in writing to all prospective Proposers. No interpretation shall be considered binding unless provided in writing by the City of Palm Bay.

PRICING - If a unit price, when extended, is obviously in error, the incorrect extended price will be disregarded.

PROPOSAL ACKNOWLEDGE: By submitting a proposal, the proposer certifies that he/she has fully knowledge of the scope, nature, and quality of work to be performed.

PROPOSER EXPENSES - No out of scope services shall be provided in the absence of prior, written authorization in the form of a written supplemental agreement and issuance of an appropriate amendment to the contract. The City will not pay a retainer or similar fee. The City is not responsible for any expenses that proposer may incur in preparing and submitting proposals called for in this request. The City will not pay for any out-of-pocket expenses, such as word processing; photocopying; postage; per diem; travel expenses; and the like, incurred by the proposer. The City will not be liable for any costs incurred by the proposer in connection with any interviews/presentations (i.e., travel, accommodations, etc.).

PUBLIC ENTITY CRIMES – A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals for leases of real property to a public entity, may not be awarded or perform work as a Successful Proposer, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the Convicted Vendor List (Section 287.133, Florida Statute).

PUBLIC RECORDS: Florida Law provides that municipal records shall at all times be open for personal inspection by any person. Information and materials received by the City in connection with an RFP response shall be deemed to be public records subject to public inspection upon award, recommendation for award, or 10 days after proposal opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, Florida Statutes. If the Proposer believes any of the information contained in his or her response is exempt from disclosure, then the Proposer, must in his or her response, specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

QUANTITIES - The City reserves the right, in its sole discretion, to increase or decrease total quantities as it deems necessary. Quantities listed on proposal sheet(s) identify anticipated award amounts.

REQUEST FOR ADDITIONAL INFORMATION/CLARIFICATION: The proposer shall furnish such additional information/clarification as the City may reasonably require. This includes, but is not limited to information that indicates financial resources as well as the ability to provide and maintain the services requested. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate, including but not limited to, a background investigation of service personnel.

REQUEST FOR MODIFICATION: The City reserves the right to negotiate a final agreement with the top-ranked proposer to more fully meet the needs of the City.

RESPONDENT/RECOMMENDATION OF AWARD INFORMATION: The Notice of Consideration for Award for Proposals is posted at least seventy-two (72) hours in advance of such award. Proposers are responsible to check the following locations for updates on this proposal's status: on the bulletin board located in the main lobby of the City Hall building at 120 Malabar Road SE, Palm Bay, FL 32907; at <http://www.demandstar.com> and www.publicpurchase.com. Links to both

websites are available through the City's Web Page <http://www.palmbayflorida.org>, under the Finance Department, Purchasing Division. Notice of Award, Proposals currently available, and Tabulation sheets are available Online. Proposers, who do not have Internet access, may request a copy of the tabulation by enclosing a stamped, self-addressed envelope with the Proposal response.

TAX EXEMPTIONS - The City of Palm Bay is tax exempt. The City of Palm Bay's tax-exempt number is 85-8012646361C-4.

TIME FOR CONSIDERATIONS - Proposals will be irrevocable after the time and date set for the opening of Proposals and for a period of ninety (90) days thereafter.

TRADE SECRETS - Respondents should not send trade secrets. If, however, trade secrets are claimed by any respondent they will not be considered as trade secrets until the City is presented with the alleged secrets together with proof that they are legally trade secrets. The City will then determine whether it agrees and consents that they are in fact trade secrets. If a respondent fails to submit a claim of trade secrets to the City before obtaining the City's agreement, any subsequently-claimed trade secrets will be treated as public records and will be provided to any person or entity making a public records request for the information (F.S. 119.01).

SPECIAL CONDITIONS

LOCAL PREFERENCE: On September 4, 2008, the City of Palm Bay City Council authorized Resolution #2008-76 which allows for a Local Business Purchasing Preference Policy. The Policy includes:

Definitions: The term "Business" shall mean a person, firm, corporation or other business entity which is duly licensed and authorized to engage in a particular work in the State of Florida. Business shall be broken down into four (4) types of classes:

1. Class A Business – shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City **and** shall maintain a staffing level for the proposed work of at least fifty percent (50%) who are residents of the City.
2. Class B Business - shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of the City **or** shall maintain a staffing level for the proposed work of at least fifty percent (50%) who are residents of the City.
3. Class C Business - shall mean any Business that has established and agrees to maintain a permanent place of business located in a non-residential zone and staffed with full-time employees within the limits of Brevard County.
4. Class D Business – shall mean any Business that does not qualify as either a Class A, Class B, or Class C business.

Provided that: 1) A Business can only qualify for one class preference level; 2) A Business with outstanding liens, fines or violations with the City shall not be eligible to qualify for Class A, Class B, or Class C status; 3) A Business which operates through the use of a post office box, mail house or a residential/home address shall not be eligible to qualify as either a Class A or Class B Business, with respect to the business's location; and 4) A Business may receive a conditional classification as a Class A or Class B Business if that Business certifies in writing to the Purchasing Manager that it will meet the requirements of the specific class within three (3) months of being awarded the work.

The term "Budgeted Cost" shall mean the estimated cost of the project as determined by the appropriate Department Head and certified to the Purchasing Manager after a proposal is submitted to the City but prior to the opening of said proposal.

For purchases in excess of twenty-five thousand dollars (\$25,000) which typically are obtained through a formal competitive request for proposal process, vendors may be given a preference for being a local business. Preferences may be given for purchasing or letting of contracts for procurement of personal property, materials, certain contractual services, and construction of improvements to real property or to existing structures.

Preferences will be considered after the completion of the final rankings. Preference shall be applied to Businesses as follows:

1. Class A Business - ten percent (10%) preference;
2. Class B Business – seven and one-half percent (7.5%) preference;
3. Class C Business – five percent (5%) preference.

The local preference shall not be applied in the following circumstances:

1. The Business submits a proposal that exceeds the projected Budget Cost;
2. The proposal is in excess of one million dollars (\$1,000,000.00);
3. State or federal law prohibits the use of local preferences;
4. The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies which prohibit the use local preferences;
5. Emergency purchases;
6. Sole source purchases;
7. Cooperative purchasing agreements or utilization of other agency contracts;
8. The Business is determined to be unqualified to perform the work as determined by the City.

STANDARD INSURANCE REQUIREMENTS

The Certificate of insurance shall be made to the City of Palm Bay, 120 Malabar Rd. SE, Palm Bay FL 32907 and should reference the operation.

Prior to renewal, non-renewal, cancellation, or change or modification of any insurance policy, at least 30 days advance written notice shall be given to the City of Palm Bay.

Minimum coverage with limits and provisions are as follows:

- A. Commercial General Liability: The Successful Proposer shall provide minimum limits of \$1,000,000.00 each occurrence, \$1,000,000.00 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent Successful Proposers, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing with any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an “occurrence” form.
- B. Automobile: Successful Proposer shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:
 - Owned Automobiles
 - Hired Automobiles
 - Non-Owned Automobiles
- C. Professional Liability Insurance: Professional liability insurance with a minimum limit of one million dollars (\$1,000,000) aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible is not to exceed \$5,000 for each claim CONSULTANT represents it is financially responsible for the deductible amount.

- D. Umbrella/ Excess Liability: Successful Proposer shall provide umbrella/excess coverage with limits of no less than \$1,000,000.00 excess of Commercial General Liability, Automobile Liability, Employers Liability.

- E. Workers' Compensation: The Successful Proposer shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Florida. Said policy must include Employers' Liability insurance with limits of no less than:
 - Each Accident \$ 100,000.00
 - Disease – Policy Limit \$ 500,000.00
 - Disease – Each Employee \$ 100,000.00

Successful Proposer shall further insure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.

- F. Other Insurance Provisions: The City of Palm Bay is to be specifically included on all certificates of insurance (with exception to Workers Compensation) a named additional insured. All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The certificate shall provide a thirty (30) day notification clause in the event of cancellation or modification to the policy.

Deductible Clause – Successful Proposer to declare self-insured retention or deductible amounts.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the Successful Proposer to insure that all subcontractors comply with the same insurance requirements spelled out above. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier.

SECTION II

AGENCY OVERVIEW

The City of Palm Bay Bayfront Community Redevelopment Agency (BCRA) was established in 1999. Seven (7) appointed commissioners serve as the Community Redevelopment Agency Board. The BCRA encompasses approximately 1070 acres of area in the northeastern corner of the City of Palm Bay along the US-1 – Indian River Lagoon corridor. The district has a mix of industrial, commercial, institutional and residential land uses.

For additional information about the City of Palm Bay Bayfront Community Redevelopment Agency (BCRA), to include the current Redevelopment Plan, area maps and more, please visit our website at: <http://www.palmbayflorida.org/bayfront/index.html>.

SCOPE OF WORK

The City of Palm Bay and its Bayfront Redevelopment Agency invites qualified firms, organizations and individuals with demonstrated expertise in updating and modifying redevelopment plans, pursuant to the Community Redevelopment Act, Chapter 163, Part III (Florida Statutes), to submit qualifications and fee schedules to complete the following tasks:

- Review the existing Redevelopment Plan (adopted in 1999), Finding of Necessity and Agency 2008 – 2013 Strategic Plan;
- Consult with City staff (at least weekly by phone, e-mail or in person);

- Provide monthly status reports;
- Obtain public input through a Public Involvement Program;
- Conduct the process for updating and adopting the Bayfront Redevelopment Plan as required by statute;
- Provide 15 hard copies of the final version of the adopted Bayfront Redevelopment Plan, as well as, a reproducible disk;
- Present to BCRA Board and/or City Council, as needed.

The selected firm shall work closely with the BCRA and City Staff in establishing a Public Involvement Program that ensures the public is able to provide input and review of preliminary plans prior to plans being presented to the BCRA, Planning and Zoning Board and City Council. The update to the Redevelopment Plan is targeted to be completed prior to September 30, 2009.

QUALIFICATIONS

Respondents must be recognized professional urban planners with a comprehensive understanding of the Community Redevelopment Act, urban design, redevelopment practices, housing, transportation planning and infrastructure planning. Respondents must demonstrate a thorough knowledge of the legal aspects of updating and modifying the Redevelopment Plan and outline the sequence of action steps essential to completing the Scope of Work.

SECTION III

PROPOSAL SUBMITTALS

For the proposal to be considered, one (1) original **marked "ORIGINAL"**, and five (5) copies of the proposal be received by the City of Palm Bay on or before 5:00 P.M. on Tuesday, February 24, 2009.

NOTE: Proposals will not be opened on the same date and time as identified above. The proposal opening will be conducted in a public meeting at 3:00 P.M. on Wednesday, February 25, 2009.

Proposers shall include the following information in their proposal document and should use the following format when compiling their responses. Sections should be tabbed and labeled; pages should be sequentially numbered at the bottom of the page.

Title Page: Title Page shall show the request for proposal's subject, title and proposal number; the firm's name; the name, address and telephone number of a contact person; and the date of the proposal.

Transmittal Letter: The response shall contain a cover letter signed in blue ink by a person who is authorized to commit the offeror to perform the work included in the proposal, and should identify all materials and enclosures being forwarded in response to the RFP.

Table of Contents: The Table of Contents shall provide listing of all major topics, their associated section number, and starting page.

Executive Summary: The Executive Summary of the proposal shall be limited to three single-spaced typewritten pages. The purpose of the Executive Summary is to provide a high-level description of the offeror's ability to meet the requirements of the RFP.

General Information: Brief discussion about Offeror's business history and current purpose/function in the marketplace.

Summary of Qualifications: Indicate the firm's background in providing these services to governmental entities. Indicate specifically the members of the firm who will have primary responsibility for the City's contract and provide a detailed resume for each. Also indicate all key individuals, and their tasks and/or areas of expertise.

Provide a list of current and projected workloads by firm and key individuals. Include a positive statement that the individual or firm has sufficient resources to perform the project as outlined in the Scope of Work.

Provide a listing of all comparable client references that are using the institution’s professional services, (i.e., client name, address, telephone number, contact person) and length of time service was provided. Provide title, brief description, contract time period and total value of each project.

Technical Proposal: Outline of proposed manner in which the scope of work will be addressed; description of working relationships with other Florida municipalities and public entities. Approach shall demonstrate firm’s capability to work within the City’s budget and time constraints.

Proposed Cost: All costs associated with delivering the requested services shall be detailed in the format requested on pages 17 through 18.

Attachments: Additional information, which the offeror feels will assist in the evaluation should be included.

Additional Required Proposal Submittal Forms: Addenda Acknowledgements; Identical Tie Proposal Sheet (if applicable); Local Preference Certification Statement (if applicable).

SECTION IV

REQUEST FOR PROPOSAL TIME LINE

The **anticipated** schedule for this RFP is as follows:

Proposal Issue Date	January 29, 2009
Proposal Advertised	January 31, 2009
Deadline for Questions	February 17, 2009
Responses/Addendum Issued	February 18, 2009
Submission Deadline (RFP close date)	February 24, 2009
RFP Opening Date	February 25, 2009
Short List Created	March 10, 2009
Interviews/Presentations	March 18, 2009
Final Selection	March 20, 2009
BCRA Commission Consideration	April 7, 2009
City Council Consideration	April 16, 2009
Contract Award	April 17, 2009
Commencement of Work	April 27, 2009
Project Completion	September 30, 2009

EVALUATION PROCEDURE

All proposals will be subject to a review and evaluation process. It is the intent of the City that all proposers responding to this RFP, who meet the requirements, will be ranked in accordance with the criteria established in these documents. The City will consider all responsive and responsible proposals received in its evaluation and award process.

The City’s evaluation criteria will include consideration of, but will not be limited to the following:

- 1) Responsiveness of the proposal related to the Scope of Work;
- 2) The ability, capability and skill of the proposer to perform the contract;
- 3) Whether the provider can perform the contract within the time specified without delay or interference.
- 4) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

- 5) The ability of the proposer to provide future service for the use of the subject of the contract;
- 6) The sufficiency of the financial resources and ability of the proposer to perform the contract or provide the commodities or service;
- 7) Whether the proposer can perform the contract within the time specified, without delay or interference;
- 8) The character, integrity, reputation, judgment, experience and efficiency of the proposer;
- 9) Professional licensure required when service of a skilled nature is required by law to perform such service and/or skill;
- 10) The quality of performance of previous contracts;
- 11) The previous and existing compliance by the proposer with laws and ordinances relating to the contract;
- 12) The number and scope of conditions attached to the bid or proposal;
- 13) Responsiveness of client references;
- 14) Net costs; and
- 15) Such other information as may be secured.

CRITERIA

Firms submitting the required criteria will have their proposals evaluated and scored for technical response, qualifications and experience, quality of proposal, and cost. The following represent the principal selection criteria, which will be considered during the evaluation process. Criteria will be weighted based on 100% of total value.

Technical Response (max. 25%)

- Work plan for City’s project
- Proposed project schedule for completion of work
- Relevant project examples particularly in Florida CRA districts

Qualifications & Experience (max 25%)

- Background & history of proposer’s firm
- Proposer firm’s experience
- Experience of key individuals who are assigned to City’s project
- Location/Availability of key staff persons assigned to the project
- References from previous clients of similar engagements

Quality of proposal (max 10%)

- Completeness of proposer’s submittal
- Degree to which it complies with all the requirements and requests for information

Contract Cost (max 40%)

- Total all-inclusive maximum price to be proposed.
- An itemized listing of all direct and indirect costs including out-of-pocket expenses shall be attached.
- An additional schedule of estimated man hours and schedule of man hour rates shall also be attached to proposal submittal.

Calculation of points for cost will be completed as described in the following **EXAMPLE**. Budget at \$250,000.00 with a weighted multiplier of 75% of an available 100% total value:

Company	Base Proposal Cost	Budget	% of Budgeted Cost	Multiplier	Total Points Assigned
#1	\$ 274,000.00	\$250,000	0.9124	75	68.4
#2	\$ 235,000.00	\$250,000	1.0638	75	79.8
#3	\$ 248,000.00	\$250,000	1.0008	75	75.6

In accordance with City Resolution #2008-76 for Local Preference, Section 2-B: The term "Budget Cost" shall mean the estimated cost of the project as determined by the appropriate Department Head and Certified to the Purchasing Manager after a proposal is submitted to the City but prior to the opening of said proposal.

During the evaluation process and at the sole discretion of the City, requests for clarification of one or more proposer submittals may be conducted. This request for clarification may be performed by the City in a written format, or through scheduled oral interviews. Such clarification request will provide proposers with an opportunity to answer any questions the City may have on a proposer's submittal.

SELECTION PROCESS

In general, the City wishes to avoid the expense to the City and to proposers of unnecessary oral interviews. Therefore, the City will make every reasonable effort to achieve the ranking using written submittals alone. If no single top-ranked firm can be clearly identified by review of the written submittals alone, then the evaluator(s) will request the Purchasing & Contracts Division to schedule the top ranked firm(s) for oral presentations/interviews.

Formal Oral Presentations/Interviews (If Required)

The City may chose to conduct oral interviews with, or receive oral presentations from, one or more of the proposers. If the City chooses to allow oral interviews and/or presentations, such interviews or oral presentations will be open to the public. If oral presentations or interviews are held the following guidelines will be used.

The City's Purchasing & Contracts Division will establish the schedule and proposers will be notified at least seven (7) calendar days in advance of the date, time and place of the presentations. The specific format of each presentation will be provided to proposers with the notifications.

The City will allot equal time for each proposer divided into three sequential parts: formal presentations, questions and answers, and discussion.

Oral interviews/presentations will provide an opportunity for the proposers to demonstrate their ability to use time efficiently, effectively and economically. The times allotted are maximums and no firm will be penalized for using less than the allotted time.

Final Ranking and Recommendation for Award

After clarification is completed, the Committee will re-score all proposals to determine a final ranking of proposers considered to be most capable of performing the required project in the best interest of the City.

The Committee's final ranking will be provided to the Purchasing Manager who will then factor in the local preference percentages where applicable (in accordance with City of Palm Bay Resolution #2008-76, dated 9/5/08).

The City will rank all complete written proposals received and/or formal oral presentations/interviews in order of preference and submit this ranking as its' final recommendation to the City Manager. The City Manager may award the proposal, or if require by ordinance, will review and make a recommendation to the City Council for further action. The City Manager or City Council's (whichever applicable) decision will be final.

SECTION V APPENDIX



REQUEST FOR PROPOSAL #10-0-2009/SB BAYFRONT REDEVELOPMENT PLAN CONSULTANT SERVICES

**PROPOSALS TO BE RECEIVED NO LATER
THAN TO 5:00 P.M. ON TUESDAY 02/24/2009**

**PROPOSAL OPENING (NOTE: NOT SAME AS RECEIPT DATE
3:00 PM ON WEDNESDAY 02/25/2009)**

PROPOSAL FORM
RFP NO. 10-0-2009/SB, BAYFRONT REDEVELOPMENT PLAN CONSULTANT SERVICES

The undersign hereby declares that after examining the Proposal Documents for which proposals were advertised to be returned no later than 5:00 p.m., Tuesday, February 24, 2009, does hereby submit a response to the proposal and warrants that:

- a. She/He is an officer of the organization.
- b. She/He is authorized to offer a proposal in full compliance with all requirements and conditions, as set forth in the RFP.
- c. She/He has fully read and understands the RFP and has full knowledge of the scope, nature, quantity and quality of the work to be performed, and the requirements and conditions under which the work is to be performed.
- d. If the proposal is accepted, a Purchase Order and/or Contract will be issued as proposed subject to any revisions mutually agreed-upon by the City and the Proposer.

Parts and service are available at: _____

In submitting this Proposal, Proposer represents as more fully set forth in the agreement, that Proposer has examined copies of all the contract Documents and of the following Addenda:

Addendum No. _____, Dated _____	Addendum No. _____, Dated _____
Addendum No. _____, Dated _____	Addendum No. _____, Dated _____

The City desires to accept this Proposal only if in so doing the City can place a limit on the City's liability or any cause of action arising out of the submission of this Proposal, so that the City's liability never exceeds the sum of \$100.00. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Proposer expresses its willingness to submit this Proposal with the knowledge that the Proposer's recovery from the City for any action or claim arising from the submission of this Proposal is limited to a maximum amount of \$100.00. Accordingly, and notwithstanding any other term or condition of this Request for Proposal that may suggest otherwise, Proposer agrees that the City shall not be liable to Proposer for damages in an amount in excess of \$100.00, for any action, cause, reason or claim arising out of the submission of this Proposal. Nothing contained on this form or elsewhere in this Request for Proposal is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

Authorized Signature

Address

Printed Name & Title

City, State, Zip Code

Company

Telephone No.

Date:

Fax. No.

PROPOSAL FORM
RFP NO. 10-0-2009/SB, BAYFRONT REDEVELOPMENT PLAN CONSULTANT SERVICES
SHEET 2 OF 2

Total Project Cost: \$ _____

ATTACH:

- 1) An itemized listing of all direct and indirect costs including out-of-pocket expenses
- 2) A schedule of estimated man hours and man hour rates

Authorized Signature	Address
Printed Name & Title	City, State, Zip Code
Company	Telephone Number
Date	Fax Number
Email Address	Cell Phone Number

IDENTICAL TIE PROPOSALS

In accordance with Section 287.087, Florida State Statutes, preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals that are equal with respect to price, quality, and service, are received by the State or any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that has completed a drug-free workplace program shall be given preference in the award process. Established procedure for processing tie proposals will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibitions.
- 2) Inform employees about the dangers of drug abuse in the workplace the business policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under Proposal a copy of the statement
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under Proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to any violation of Florida Statutes or of any controlled substance law(s) of the United States or any state five (5) days after such conviction or plea.
- 5) Impose sanctions on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, any employee who is so convicted.
- 6) Make a good-faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

AUTHORIZED SIGNATURE

COMPANY

DATE

LOCAL PREFERENCE CERTIFICATION STATEMENT

STATE OF _____)

COUNTY OF _____)

_____, being duly sworn, deposes and says that:

He/she is _____ of _____,
(Title) (Firm/Company)

has submitted the attached Proposal, and is requesting consideration for the following preference to the Purchasing Manager of the City of Palm Bay.

(1) _____ is a **Class A** Business as defined in the City of Palm Bay Resolution No. 2008-76. A copy of the City of Palm Bay Business Tax Receipt and a complete list of full-time employees and their addresses is attached as justification.
Firm / Company Name

(2) _____ is a **Class B** Business as defined in the City of Palm Bay Resolution No. 2008-76. A copy of the Business Tax Receipt or a complete list of full-time employees and their addresses is attached as justification.
Firm / Company Name

(3) _____ is a **Class C** Business as defined in the City of Palm Bay Resolution No. 2008-76. A copy of the Brevard County Business Tax Receipt is attached as justification.
Firm / Company Name

(4) _____ requests a **Conditional Class A** classification as defined in the City of Palm Bay Resolution No. 2008-76. Written certification of intent is attached.
Firm / Company Name

(5) _____ requests a **Conditional Class B** classification as defined in the City of Palm Bay Resolution No. 2008-76. Written certification of intent is attached.
Firm / Company Name

(6) _____ is considered a **Class D** Business as defined in the City of Palm Bay Resolution No. 2008-76 and does not qualify for Local Preference consideration. (Notary not required for Class "D")
Firm / Company Name

The foregoing instrument was acknowledged before me this _____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

Sworn to or affirmed and subscribed before me this _____ day of _____, 2009.

Personally known		Produced Identification		Type of Identification	
------------------	--	-------------------------	--	------------------------	--

Notary Public State of: _____

**PROFESSIONAL CONSULTANT SERVICES AGREEMENT
CITY OF PALM BAY
BAYFRONT REDEVELOPMENT PLAN CONSULTANT SERVICES**

This is an agreement entered into this ____ day of ____ 2009, by and between the City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907 a political subdivision of the State of Florida, hereinafter referred to as CITY and _____ hereinafter referred to as CONSULTANT.

For and in consideration of the mutual agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the CITY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide professional services as prescribed herein.

SECTION 1 - GENERAL IDENTIFICATION OF SERVICES

The following documents are incorporated herein and made an integral part of this Agreement:

Specifications prepared by CITY in its Request for Proposal No. 10-0-2009/SB, Bayfront Redevelopment Plan Consultant Services (Exhibit 1).

Proposal Submittal for CITY prepared by CONSULTANT dated _____ (Exhibit 2).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specification or instruction, the following priority is established:

- Specific direction from CITY Manager (or designee).
- This Agreement and any attachments.
- Exhibit 1
- Exhibit 2

All professional services provided by the CONSULTANT for the CITY shall be identified in the attached EXHIBIT "A" Statement of Work and Exhibit "B" Consultant's Proposal. No additional work shall be performed under this Agreement without written authorization from the City. The written authorization for additional services shall constitute an addendum to this Agreement.

SECTION 2 - CITY OBLIGATIONS

The CITY agrees that it shall furnish to the CONSULTANT, upon request, any data available in the CITY'S files pertaining to the work to be performed under this Agreement.

SECTION 3 - PROFESSIONAL SERVICES

Upon receipt of Authorization to Proceed, CONSULTANT agrees to perform professional services set forth in Exhibit "A" in accordance with the negotiated terms of this Agreement, and in accordance with accepted professional standards and practices.

In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel.
- B. Comply with federal, state, county and local laws or ordinances applicable to the work.
- C. Cooperate fully with the CITY in scheduling and coordinating all phases of the work.
- D. Supervise and coordinate the work of any subconsultants.
- E. Cooperate and coordinate with other CITY consultants, as directed by the CITY.
- F. Report the status of the work to the CITY upon request and hold records, and other documents open to the inspection of the CITY or its authorized agent at any time during normal business hours.
- G. Submit for CITY review all data representative of the progress of the Work at the percentage stages of completion that may be stipulated in Exhibit "A". Submit for CITY approval the final work product upon incorporation of any modifications requested by the CITY during any previous review. Any CITY approval of the CONSULTANT'S work shall not be deemed to diminish the CONSULTANT'S warranty set forth above.
- H. Confer with the CITY during the further development and implementation of improvements for which the CONSULTANT has provided services.
- I. Interpret documents, correct errors and omissions and prepare any necessary revisions not involving a change in the scope of the work required, at no additional cost.

SECTION 4 - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence as specified in Section 7 of this Agreement.

SECTION 4.1-DELAY IN PERFORMANCE/FORCE MAJURE

CITY shall be entitled to withhold progress payments from CONSULTANT for services rendered until completion of services to CITY's satisfaction.

A delay due to an Act of God, fire, labor dispute, manufacturing delay, riot or civil commotion, act of public enemy or other cause beyond the control of CONSULTANT, shall not

subject CITY to any liability to CONSULTANT, nor CONSULTANT any liability to the CITY. At CITY's option, the period specified for performance of services may be extended by the period of delay occasioned by any such circumstance, and services not performed by CONSULTANT shall be made or performed during such extension, or the time to perform the services not performed shall be extended for a period equal to such delay. During this period such delay shall not constitute a delay by CONSULTANT.

SECTION 5 - COMPENSATION

The CITY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below, as specified in an approved Purchase Order:

- A. Lump Sum Fee – A fee in the amount of (XX.XX) for the work, payable based on completion of deliverables as follows:

SECTION 6 - PAYMENT AND PARTIAL PAYMENTS

Subject to the CITY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the CITY may make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month, and in accordance with Exhibit "A" and Exhibit "B", and under the provisions of Chapter 218, Part VII, (Florida Prompt Payment Act), Florida Statutes. City shall promptly pay consultant any undisputed amounts consistent with the Florida Prompt Payment Act.

- A. The CONSULTANT shall submit signed invoices to the CITY.
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT and approved by the CITY. Each invoice shall include any authorized and reimbursable expense, which must be accompanied by appropriate documentation.
- C. Invoices for the work, other than lump sum, shall include a breakdown for each part of the work billed for each item.

SECTION 7 - SCHEDULE OF WORK

The CITY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed, and in which order. Should a work revision effect a change in scope, cost or schedule, the CONSULTANT shall submit such revision(s) for review and, if warranted, written approval shall be provided by the CITY.

The CONSULTANT shall commence work within five working days of the Authorization to Proceed unless otherwise specified in the Authorization to Proceed.

SECTION 8 - RIGHT OF DECISIONS

All services by the CONSULTANT shall be performed in accordance with all professional standards and practices and to the reasonable requirements of the CITY. The CITY shall be the sole arbiter of all claims, questions and disputes arising under this Agreement. Any determination by the City shall be final, conclusive and binding upon the CITY and the CONSULTANT. In the event the CONSULTANT does not concur with any decision of the CITY, it must, within ten (10) days after determination by the CITY, present written objections to the decision to the CITY Manager or his designee for final resolution. Before taking any action to contest the CITY's determination, the CONSULTANT must follow the appeal process established in this Agreement and the CONSULTANT agrees to strictly abide by the ten-day time deadline set forth in this paragraph; in failing to do so, CONSULTANT acknowledges that the CITY's decision final.

SECTION 9 - OWNERSHIP OF DOCUMENTS

All work products developed by the CONSULTANT pursuant to this Agreement shall become the sole property of the CITY without restrictions or limitation upon their use and shall be made available by the CONSULTANT at any time upon request by the CITY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the CITY for its use.

CONSULTANT agrees that all documents maintained and generated pursuant to this Agreement shall be subject to all provisions of Chapter 119, Florida Statutes.

It is further understood that any report, tracing, plan, map or other work product, without limitation, given by CITY to CONSULTANT pursuant to this Agreement shall at all times remain the property of CITY, shall be returned to CITY, and shall not be used by CONSULTANT for any other purpose without the written consent of the CITY.

SECTION 10 - REUSE OF DOCUMENTS

The CONSULTANT may not retain, reuse and/or copy data or work products developed by the CONSULTANT for the CITY without express written permission of the CITY. The CONSULTANT will upon request provide the CITY additional copies of reports, tracings, plans, maps, and/or other work products produced pursuant to this Agreement at the cost for reproduction.

SECTION 11 - NOTICES

Any notices, reports or other written communications from the CONSULTANT to the CITY shall be considered delivered when posted by certified mail or delivered in person to the CITY.

The CONSULTANT'S representative will be:

CITY'S representative will be:

Lee Feldman
City Manager
City of Palm Bay
120 Malabar Road, SE
Palm Bay, FL 32907

With Copies to:

Bobbye Marsala
Purchasing Manager
120 Malabar Rd. SE
Palm Bay, FL 32907

Any notices, reports or other communications from the CITY to the CONSULTANT shall be considered delivered three (3) days after being posted by certified mail to the CONSULTANT at the last address left on the file with the CITY or immediately if delivered in person to said CONSULTANT or the CONSULTANT'S authorized representative. The CONSULTANT'S representative will be:

SECTION 12 - AUDIT RIGHTS

The CITY reserves the right to audit the records of the CONSULTANT related to this Agreement at any reasonable time during the prosecution of the work included herein and for a period of three years after final payment is made. The CONSULTANT agrees to provide copies of any records necessary to substantiate payment requests to the CITY as may be requested by the CITY, solely at the cost of reproduction.

SECTION 13 - SUBCONTRACTING

The CONSULTANT shall not subcontract, assign, or transfer any work under this Agreement without the written approval of the CITY. The CONSULTANT shall cause the name(s) of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data.

The CONSULTANT shall be fully responsible to CITY for all acts and omissions of any officers, representatives, agents, employees, or subcontractors of CONSULTANT. Subcontractors of CONSULTANT shall have appropriate general liability, professional liability and workers' compensation insurance, or be covered by CONSULTANT's insurance. CONSULTANT shall furnish CITY with appropriate proof of insurance and releases from all subcontractors in connection with the work performed.

SECTION 14 - CONTINGENT FEES

The CONSULTANT warrants that no person or company was employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage,

brokerage or contingent fee, excepting bonafide employee, any fee commission, contribution, donation, percentage, gift, or any other consideration, contingent upon, or resulting from award of this Agreement. For any breach or violation of this provision, the CITY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or amounts due to CONSULTANT or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages related to the breach of the provision and shall report the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION 15 - TERMINATION/MODIFICATION OF AGREEMENT

1. The CONSULTANT agrees that the CITY may terminate this Agreement for any reason upon ten (10) days written notice to the CONSULTANT.
2. In the event of termination by the CITY, the CITY'S sole obligation to the CONSULTANT shall be for payment for those portions of satisfactorily completed work authorized. Such payment shall be determined on the basis of the hours of work performed by the CONSULTANT, or the percentage or work complete as estimated by the CONSULTANT and agreed upon by the CITY up to the time of termination. In the event of such termination, the CITY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons or entities to perform the same or similar services. CONSULTANT shall not be entitled to any other amounts or damages including but not limited to anticipated profits, consequential damages or those set forth in Section 4 of this Agreement upon termination by CITY pursuant to this Section.
3. It is understood by CITY and CONSULTANT that any payment to CONSULTANT shall be made only if CONSULTANT is not in default under the terms of this Agreement as determined by the CITY.
4. The terms of this Agreement may only be modified upon the written, mutual agreement of the CONSULTANT and the CITY.
5. In the event that the CONSULTANT changes its name, merges with another company, becomes a subsidiary or makes other substantial changes in its business structure or its principals, the CITY reserves the right to terminate this Agreement.
6. In the event of termination of this Agreement, the CONSULTANT agrees to surrender any and all documents prepared by the CONSULTANT for the CITY and those documents delivered by the CITY to the CONSULTANT that pertain to this Agreement, of which, the CITY will have full ownership thereof, CONSULTANT may retain copies of such documents for record purposes.

SECTION 16 - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for the duration of the PROJECT, unless it is terminated as provided herein.

SECTION 17 - DEFAULT

An event of default shall mean a breach of this Agreement by CONSULTANT as determined by the sole discretion of the CITY. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include but not be limited to the following:

- CONSULTANT has not performed services on timely basis;
- CONSULTANT has refused or failed to supply enough properly-skilled personnel;
- CONSULTANT has failed to make prompt payment to subcontractors or suppliers for any services;
- CONSULTANT has failed to fulfill representations made in this Agreement; or
- CONSULTANT has refused or failed to provide the Services as defined in this Agreement.

In an Event of Default, CONSULTANT shall be liable for all damages to the CITY and others resulting from the default, including but not limited to:

- Lost funding,
- The difference between the cost associated with procuring services and the amount actually expended by CITY, including procurement and administrative costs, and
- Consequential damages.

CITY may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy given or otherwise existing and may be exercised from time to time and as often and in such order as may be deemed expedient by CITY. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. CITY's right and remedies as set forth in this Agreement are not exclusive but are in addition to any other rights and remedies available to CITY in law or in equity.

SECTION 18 – INDEMNIFICATION

For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT, including but not limited to the CONSULTANT's officers, officials, employees, representatives, agents, contractors officers, etc., subcontractors and their officers, etc. (hereinafter CONSULTANT) hereby agrees to indemnify, hold harmless and defend the City of Palm Bay, including but not limited to its officers, agents, subcontractors, officers, officials, representatives, volunteers, employees and all those others acting on the City's behalf (hereinafter CITY) against any and all liability, loss, cost, damages, expenses, claims or

actions of whatever type or nature, including but not limited to attorney and expert fees and suit cost, for trials and appeals, that the City may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission of CONSULTANT in the execution, performance or non-performance or failure to adequately perform CONSULTANT'S obligation pursuant to this Agreement.

SECTION 19 - INSURANCE

The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

- A. **Commercial General Liability:** The contractor shall provide minimum limits of \$1,000,000.00 each occurrence, \$1,000,000.00 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing to any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an "occurrence" basis and form.
- B. **Automobile Liability Insurance:**
Contractor shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:
- Owned Automobiles
 - Hired Automobiles
 - Non-Owned Automobiles
- C. **Professional Liability Insurance:** Professional liability insurance with a minimum limit of one million dollars (\$1,000,000) aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible is not to exceed \$5,000 for each claim CONSULTANT represents it is financially responsible for the deductible amount.
- D. **Workers' Compensation Coverage:**
Full and complete Workers' Compensation Coverage, including coverage for Employer's Liability, as required by State of Florida law, shall be provided.
- E. **Insurance Certificates:**
The City of Palm Bay is to be specifically included on all certificates of insurance (with exception to Workers Compensation) as an additional insured. All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty -

(30) days prior to said expiration date. The certificate shall provide a thirty - (30) day notification clause in the event of cancellation or modification to the policy.

The Contractor shall declare any self-insured retention or deductible amount in excess of \$5,000 for any policy. The City reserves the right to reject any self-insured retention or deductible in excess of \$5,000.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the contractor to insure that all subcontractors comply with the insurance requirements set forth in this Agreement. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier. Contractor shall obtain insurance on an "occurrence" basis if such insurance is available at commercially reasonable premium costs. Any insurance on a "claim made" basis shall be maintained for at least three (3) years after acceptance of the Work.

SECTION 20 - QUALITY CONTROL

The CONSULTANT warrants a high level of quality control and accuracy. The CITY may request additional data collection or reanalysis of data at no expense to the CITY. If the original data collected and/or data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section 5 of this Agreement.

The CONSULTANT acknowledges that the CITY may periodically evaluate the CONSULTANT'S performance and that the evaluation may be used by the CITY to determine the CONSULTANT'S qualifications for future contracts with the CITY.

SECTION 21 - NON EXCLUSIVE AGREEMENT

The parties acknowledge that this agreement is not an exclusive agreement and the CITY may employ other consultants, professional or technical personnel to furnish services for the CITY, as the CITY, in its sole discretion, finds is in the public interest.

SECTION 21.1-REPRESENTATIONS

- A. CONSULTANT represents that it is able to furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be performed in a professional manner suitable to the CITY.
- B. CONSULTANT represents, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services described in this Agreement.
- C. CONSULTANT shall, upon the request of CITY, promptly correct or replace all

deficient work due to errors or omissions without cost to CITY. CONSULTANT shall also be responsible for all damages resulting from CONSULTANT's deficient documents. Payment in full by CITY for services performed does not constitute a waiver of this representation.

- D. All services performed by CONSULTANT shall be to the satisfaction of CITY. In cases of disagreement or ambiguity, CITY shall, as provided in Section 8 of this Agreement, decide all questions, difficulties and disputes of whatever nature that may arise under this Agreement and the CONSULTANT agrees that the CITY's decision on all claims or questions is final.
- E. CONSULTANT represents 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 company or person other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this contract. For breach or violation of this representation, CITY shall have the absolute right to cancel this Agreement without liability to CONSULTANT or any third party.

SECTION 22 - INTEREST OF MEMBERS OF CITY AND OTHERS

No officers, members or employees of the CITY, and no members of its governing body, and no other public official of any other governmental entity, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement that affects their personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 23 - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, that shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed.

Furthermore, CONSULTANT covenants and agrees that it will not undertake the representation of any governmental entity, department or agency whose jurisdiction is within or covers any portion of Brevard County, Florida without the express, written consent of the City Council of the CITY.

Furthermore, CONSULTANT acknowledges that as of the effective date of this Agreement, CONSULTANT does not represent any client whose interest is currently adverse to

the interest of the CITY. If during the term of this Agreement, CONSULTANT determines that a client it represents has or may potentially have an interest adverse to the interest of CITY, then CONSULTANT shall disclose such conflicting interest as required by this Section. Additionally, before proposing, advocating or otherwise advancing any legislation, administrative rule, regulation, or policy on behalf of a client, where such legislation, rule, regulation, or policy may potentially impact CITY and its operations, CONSULTANT shall, consistent with this Section, disclose the representation and provide a copy of the legislation, administrative rule, regulation, or policy to the City Manager.

The CONSULTANT further agrees that, in the performance of this Agreement, if any conflict of interest arises, it shall disclose, in writing, such interest to the CITY within three (3) days after the conflict arose. Such written disclosure shall provide sufficient information concerning the CONSULTANT's conflict including, but not limited to, name of the client presenting the conflicting position, the nature of the conflict, and the extent to which CONSULTANT is unable to provide the services described in this Agreement. The City Manager may take any action necessary to address the conflict of interest disclosed by CONSULTANT, including termination of this Agreement.

SECTION 24-INDEPENDENT CONTRACTOR

CONSULTANT and its employees, agents, contractors and subcontractors shall be deemed to be independent contractors and not CITY agents or employees. CONSULTANT, its employees or agents, contractors and subcontractors shall not attain any rights or benefits under CITY's Personnel Rules and Regulations or Pension Systems nor any rights generally afforded CITY's classified or unclassified employees. CONSULTANT, its agents, employees, contractors or subcontractors shall not be deemed entitled to the Florida Workers' Compensation benefits as a CITY employee.

SECTION 25-NON-DISCRIMINATION

CONSULTANT agrees that it will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap.

SECTION 26-OTHER PROVISIONS

- A. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- B. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.
- C. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined to be invalid, illegal or otherwise unenforceable under the

laws of the State of Florida by a court of competent jurisdiction, such provision, paragraph, sentence, word or phrase shall be deemed modified in order to conform with Florida law or any order entered by such court. If not modifiable to conform to such law or order, then it shall be deemed severable and, in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

- D. The rights of the parties hereto shall be construed and be subject to the jurisdiction of the courts in accordance with the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be in Brevard County, Florida.

SECTION 27-LIMITATION OF LIABILITY

The CITY desires to enter into this Agreement only if in so doing the CITY can place a limit on the CITY's liability for any cause of action arising out of this Agreement, so that the CITY's liability for any breach never exceeds the sum of \$100.00. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT's recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the CITY to CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, CONSULTANT agrees that the CITY shall not be liable to CONSULTANT for damages in an amount in excess of \$100.00 which amount shall be reduced by the amount actually paid by the CITY to CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the CITY shall include attorney fees, investigative costs, expert fees, suit costs or pre-judgment interest.

SECTION 28 - ENTIRETY OF AGREEMENT

This writing, together with documents referenced herein, embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties and added as an addendum to this Agreement.

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. The venue for any litigation arising out of this Agreement shall be Brevard County, Florida. The parties hereto acknowledge and agree, for

adequate and valuable consideration that they waive their right to trial by jury in any litigation that may arise out of any controversy that pertains to this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day of _____, 2009.

Reviewed by City Attorney: _____ **Date:** _____

ATTEST:

**CITY OF PALM BAY
BREVARD COUNTY, FLORIDA**

Alice Passmore, City Clerk

By: _____
Lee Feldman, City Manager

As approved by City Council on:

WITNESS:

By: _____
(Name of Individual)

Printed Name

CONSULTANT

By: _____
(Name of Individual)

Printed Name