



**CITY OF DELRAY BEACH
100 NW 1st AVENUE, DELRAY BEACH, FL 33444**

**RFP No. 2016-093L
Time and Attendance Solution**

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**CITY OF DELRAY BEACH, FLORIDA
PURCHASING DEPARTMENT
REQUEST FOR PROPOSALS**

**RFP No. 2016-093L
Time and Attendance Solution
Summary**

ISSUE DATE: May 23, 2016

DEPARTMENT: Information Technology

DUE DATE: June 14, 2016

TIME: 2:00 P.M. ET

The City of Delray Beach, Florida (City) is soliciting proposals from qualified companies to provide a comprehensive Time and Attendance Solution to fulfill the time accounting, reporting, and controlling needs of the City. The City intends to contract with one qualified firm to provide a Time and Attendance Solution with clocks that support two-factor verification, biometrics, open database connectivity (ODBC) and structured query language (SQL) server 2012 or greater databases (Solution). Any company wishing to submit a proposal (Proposer) must comply with the requirements contained in this Request for Proposals (RFP).

The primary objectives of this Solution are to eliminate ID card sharing and punching throughout the City, reduce and eliminate unauthorized overtime from hourly employees, and create consistency and integrity with punch-in/out procedures among the various City departments.

A **Non-Mandatory Pre-Proposal** conference has been scheduled for 9:00 A.M. ET on June 1, 2016 in the City Hall 1st Floor Conference Room, 100 N.W. 1st Avenue, Delray Beach, FL. Proposers are invited to attend and ask questions.

NOTIFICATION: The City of Delray Beach (City) utilizes the following procedures for notification of solicitation opportunities:

- Bidsync – www.bidsync.com
- Request via email purchasing@mydelraybeach.com
- City of Delray Beach – Hard copies are available at City Hall

These are the only forms of notification authorized by the City. The City shall not be responsible for receipt of notification and information from any source other than those listed. It shall be the Proposer's responsibility to verify the validity of all solicitation information received by sources other than those listed.

REQUIRED INFORMATION: This RFP contain various sections which require completion. Responses to this RFP (Proposals) must be completed and returned prior to the Due Date and Time set for Proposal opening or the Proposer will be found non-responsive.

CORRESPONDENCE: The number of this RFP must appear on all correspondence, or inquiries, pertaining to this RFP.

NOTICE OF PUBLIC DOCUMENTS: Any and all materials initially or subsequently submitted as part of the solicitation process for this RFP shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.

ADDENDA: Any interpretations, corrections or changes to this RFP will be made by addenda. Sole issuing authority shall be vested in the City Purchasing Department. Addenda will be posted and available through the City notification methods shown above.

ELECTRONIC PROPOSAL SUBMISSION: Electronic submission of Proposals will be through a secure mailbox at BidSync (www.bidsync.com) until the Due Date and Time as indicated in this RFP. It is the sole responsibility of the Proposer to ensure their proposal reaches BidSync before the solicitation Due Date and Time. There is no cost to the Proposer to submit a proposal to a City via BidSync. Electronic proposal submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate file.

Additionally, Proposers who submit an electronic proposal via BidSync shall deliver six (6) copies of the proposal each on separate universal serial bus (USB) portable flash memory cards to the City in a sealed container. Electronic copies should be in Adobe Acrobat® pdf format in one continuous file. Do not password protect or otherwise encrypt electronic proposal copies. Electronic copies must contain an identical proposal to the original. Electronic copies must be received on or before the Due Date and Time (local time) at the City of Delray Beach, Purchasing Department, 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. The Proposer's name, return address, the RFP number, RFP title, Due Date and Time must be noted on the outside of the sealed container.

HARD COPY (PAPER) SUBMISSION: Paper hard copies of Proposer's proposal can be submitted as an alternative method. The proposal and all copies must be received on or before the Due Date and Time (local time) at the City Purchasing Office, 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. Proposals must be presented to the Purchasing Department in a sealed container unless otherwise indicated. It is the sole responsibility of the Proposer to utilize the forms provided in this RFP and to ensure their proposal reaches the Purchasing Department on or before, the Due Date and Time (local time) at the City of Delray Beach, Purchasing Office, 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. City business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding City holidays. The Proposer's name, return address, the RFP number, RFP title, Due Date and Time must be noted on the outside of the sealed container. Included in the sealed container shall be:

- one (1) unbound original clearly marked "ORIGINAL".
- six (6) copies clearly marked "COPY" with all required information and identical to the original.
- one (1) electronic copy with all required information, and identical to the original, on a universal serial bus (USB) portable flash memory card. Electronic copies should be in Adobe Acrobat® pdf format in one continuous file. Do not password protect or otherwise encrypt electronic copies.

LATE PROPOSALS – PAPER SUBMISSION: Proposals received after the Due Date and Time shall be returned unopened and will be considered non-responsive. The City is not responsible for the lateness due to weather conditions, delivery service, or any other reasons.

PROPOSAL OPENINGS: All proposals submitted before the Due Date and Time shall be publicly opened by the Purchasing Department at the City Hall Building, located at 100 N.W. 1st Avenue, Delray Beach, FL or other designated City location as posted. The Purchasing Department will decrypt responses received in BidSync immediately following the designated Due Date and Time.

MINOR DEFECT: The City reserves the right to waive any minor defect, irregularity, or informality in any proposal. The City may also reject any or all proposals without cause prior to award.

EVALUATION: Proposals will be evaluated as outlined in this RFP.

AWARD: The City reserves the right to accept any proposal or combination of proposal alternates which, in the City's judgment will best serve the City's interest, reject any and all proposals or any part of a proposal, and to negotiate terms with the Successful Proposer. The City reserves the right to waive any informality in a proposal, and to award the purchase in the best interest of the City. Discrepancies in the multiplication of units of work and unit prices in Proposer's Fee Proposal will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

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ATTACHMENTS:

Exhibit A – Schedule of Pricing

Exhibit B – Sample Agreement

SECTION 1: SPECIAL TERMS AND CONDITIONS

A. INTRODUCTION AND INFORMATION

1. Purpose

The City is soliciting proposals for the provision of a comprehensive Time and Attendance Solution with integrated biometrics to fulfill the time accounting, reporting and controlling needs of the City. The City intends to contract with one qualified contractor to provide a Solution with clocks that support two-factor verification, biometrics, ODBC connectivity and SQL Server 2012 (or greater) databases.

Within this RFP are several Sections. Section 1 describes the Terms and Conditions that will apply to this RFP and any resulting Agreement. Section 2 describes the Proposal Response Requirements to be provided by the Successful Proposer. Section 3 provides forms and instructions for preparing a proposal in response to this RFP.

2. RFP Schedule

A summary schedule of the major activities associated with this solicitation is presented in Table 1, below. The City, at its sole discretion, may modify this schedule as the City deems appropriate.

Table 1

ACTIVITY	DATE
Issue RFP	May 23, 2016
Deadline for Delivery of Questions	May 31, 2016
Due Date and Time (for delivery of Proposals)	2:00 P.M. ET on June 14, 2016
Institute Cone of Silence	June 14, 2016
Phase 1 Evaluation (Responsive and Responsible)	June 16, 2016
Selection Committee Meeting - Phase 2 Evaluation	June 20, 2016
Selection Committee Meeting - Interviews	July 1, 2016 July 6, 2016 (if necessary)
Selection Committee Meeting – Final Ranking	July 8, 2016

3. BidSync

The City uses BidSync (www.bidsync.com) to administer the competitive solicitation process, including but not limited to soliciting proposals, issuing addenda, posting results and issuing notification of an intended award decision. There is no charge to potential Proposers to register and download the solicitation from BidSync. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available on the BidSync website well in advance of their intention of submitting a proposal to ensure familiarity with the use of BidSync. The City shall not be responsible for a Proposer's inability to submit a proposal by the Due Date and Time for any reason, including issues arising from the use of BidSync.

4. Point of Contact

For information concerning procedures for responding to this RFP, contact the City Purchasing Department via email at purchasing@mydelraybeach.com. Such contact shall be for clarification purposes only.

5. Questions

Each Proposer must examine this RFP, which incorporates all its addenda, appendices, exhibits and attachments to determine if the requirements are clearly stated. All questions concerning this RFP, such as discrepancies, omissions and exceptions to any term or condition of the RFP documents, including the Sample Agreement, should be submitted in writing utilizing the question / answer feature provided by BidSync at www.bidsync.com. Questions of a material nature must be received prior to the Deadline for Delivery of Questions specified in the RFP schedule.

B. TERMS AND CONDITIONS

1. Addenda, Changes, and Interpretations

Potential Proposers should utilize the question and answer feature provided by BidSync and request modification or clarification of any ambiguity, technical specifications, conflict, discrepancy, omission or other error discovered in this RFP. Requests for clarification, modification, interpretation, or changes must be received prior to the Deadline for Delivery of Questions. Requests received after the Deadline may not be addressed.

The City's response to questions and requests for information will be answered within the question/answer feature provided by BidSync. Additionally, all questions received and responses given will be provided via an addendum to this RFP and uploaded to BidSync. Material changes, if any, to the Scope of Services or the solicitation process will be made by official written addendum issued by the City and uploaded to BidSync as an addendum to this RFP. Under no circumstances shall an oral explanation given by any City official, officer, staff, or agent be binding upon the City and should be disregarded.

All addenda are a part of the RFP solicitation documents and each Proposer will be bound by such addenda. It is the responsibility of each Proposer to read and comprehend all addenda issued. Failure of any Proposer to acknowledge an issued addendum in its Response will not relieve the Proposer from any obligation contained therein.

2. Evaluation of Proposals

The City Manager will designate a Selection Committee to review and evaluate the Proposals submitted in response to this RFP. The review process will be conducted at a minimum of two phases. In Phase One, the Chief Purchasing Officer (CPO) or designee shall determine whether each Proposer is responsive and responsible. For the purposes of this RFP, a responsive Proposer means a Proposer that has submitted a proposal that conforms in all material respects to the requirements in the RFP. Accordingly, in Phase One, the CPO or designee will determine whether each Proposer correctly submitted all of the necessary forms and documents. For the purposes of this RFP, a responsible Proposer means a Proposer meets the minimum qualification requirement(s) in this RFP, Section 2.

Among other things, a Proposal may be found to be non-responsive if the Proposer failed to provide the information requested in the RFP; failed to utilize or complete the required forms; provided incomplete, indefinite, or ambiguous responses; failed to comply with the applicable deadlines; provided improper or undated signatures; or provided information that is false, misleading, or exaggerated.

In Phase Two, the Selection Committee will evaluate each proposal utilizing the following criteria:

Evaluation Criteria

Criteria	RFP Section Reference	Maximum Points
Experience: Evaluation will include overall experience and background of Proposer and Proposer's team; volume and types of projects, since May 1 2011; experience in time and attendance projects particularly in Florida and with municipal fire and police departments and civil service; feedback from client references	Section 2, Item C	10
Technical Approach: Evaluation will include channel partner relationships; approach and methodology for proposed network protocols(s) and software; engagement strategies with City representatives	Section 2, item D	10
Implementation Approach: Evaluation will include strategies and approach to the implementation and on-going support; current and future known projects and capacity to provide services; implementation schedule and timeline; training to be provided; and implementation support	Section 2, item E	10
Functional Requirements: Evaluation will include proposed Solution and how closely solution meets the requirements	Section 2, item F	45
On-going Support/Maintenance: Evaluation will include SLA, Licensing and/or maintenance and support agreement (s); response and resolution times; support hours and location; on-going post implementation support	Section 2, item G	15
Pricing: Evaluation will include pricing for Solution and pricing for maintenance and support outside of normal business hours	Section 2, item H	10
Total		100

Each Selection Committee member will evaluate, rank and score the Proposals for each of the evaluation criteria. The Selection Committee may create a short list of Proposers from the proposals received and elect to conduct interviews/presentations with the short-listed firms. If the Selection Committee elects to short-list only those Proposals from Proposer that are short-listed will be considered for award of the Agreement.

At any time during the Selection process, the City may conduct investigations it deems necessary to evaluate the proposals. Each Proposer shall promptly provide the City with any additional information reasonably requested by the City. The City shall have the right to make additional inquiries, interview some or all of the Proposers, visit the

facilities of one or more of the Proposers, or take any other action the City deems necessary to fairly evaluate a proposal.

At any time during the Selection process, the City may reject a proposal if the City concludes the Proposer is not qualified (e.g. Proposer does not satisfy the minimum requirements criteria set forth in this RFP).

The Selection Committee and/or the City Commission may select the Successful Proposer without allowing any presentations or interviews by any Proposer. For this reason, each Proposer must ensure that its proposal contains all of the information requested in this RFP.

3. Award

The City reserves the right to accept a Proposal(s) and award an Agreement that in its judgment will be for the best interest of the City. The City reserves the right to negotiate agreement terms with the Successful Proposer.

4. The City's Acceptance or Rejection of Proposals

The City reserves its exclusive right to:

- Disregard all non-conforming, non-responsive, unbalanced or conditional proposals.
- Reject any and all proposals that fail to satisfy the requirements and specifications in this RFP;
- Accept the proposal which is the best overall proposal, based on the selection criteria listed;
- Reject any and all non-responsive proposals;
- Waive minor irregularities in any proposal;
- Issue addenda or otherwise revise the requirements in this RFP;
- Reject all proposals, with or without cause;
- Issue requests for new proposals;
- Cancel this RFP.

Each Selection Committee member will evaluate, rank and score the proposals for each of the evaluation criteria. The Selection Committee may create a short list of Proposers from the proposals received and elect to conduct interviews/presentations with the short-listed firms. If the Selection Committee elects to short-list only those proposals from Proposer that are short-listed will be considered for award of the Agreement.

At any time during the Selection process, the City may conduct investigations it deems necessary to evaluate the proposals. Each Proposer shall promptly provide the City with any additional information reasonably requested by the City. The City shall have the right to make additional inquiries, interview some or all of the Proposers, visit the facilities of one or more of the Proposers, or take any other action the City deems necessary to fairly evaluate a proposal.

At any time during the Selection process, the City may reject a proposal if the City concludes the Proposer is not qualified (e.g. Proposer does not satisfy the minimum requirements criteria set forth in this RFP).

The Selection Committee and/or the City Commission may select the Successful Proposer without allowing any presentations or interviews by any Proposer. For this reason, each Proposer must ensure that its proposal contains all of the information requested in this RFP.

5. Protest Procedures

As noted above, proposals will be evaluated in two phases. If the Proposer is deemed non-responsive or non-responsible during Phase One, the CPO shall provide notice to the affected Proposer. The CPO shall also post notice on BidSync (www.bidsync.com) and the bulletin board located in the lobby of City Hall after the Selection Committee provides a recommendation for award at the conclusion of Phase Two.

Any Proposer who is aggrieved by these decisions or a decision of the City Commission may file a protest pursuant to Section 36.04 (entitled "Protest Procedures") of the Delray Beach Code of Ordinances. However, nothing contained in this RFP shall be deemed to limit the authority of the City Commission under special or general law.

Any Proposer filing a protest shall submit with its protest a Protest Bond, payable to the City, in the amount of fifteen thousand dollars (\$15,000). If the protest is decided in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check.

6. Changes and Alterations

Proposers may change or withdraw a Proposal at any time prior to the proposal Due Date and Time; however, no oral modifications will be allowed. Modifications shall not be allowed following the proposal Due Date and Time.

7. Proposer's Costs

The City shall not be liable for any costs incurred by Proposers in responding to this RFP.

8. Pricing/Delivery

All pricing should be identified on the Fee Proposal page provided in this RFP. No additional costs may be accepted, other than the costs stated on the Fee Proposal pages. Failure to use the City's Fee Proposal form and provide costs as requested in this RFP may deem Proposer's proposal non-responsive.

Proposer must quote a firm, fixed fee for all services stated in the RFP. Fees stated in the Fee Proposal must be quoted FOB: Destination and all costs, including travel to and from the City and installation, shall be.

Discrepancies in the multiplication of units of Work and unit prices submitted in the Price Proposal will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

9. Invoices/Payment

The City will accept invoices no more frequently than once per month. Each invoice shall fully detail the related fees and shall specify the status of the particular task or project as of the date of the invoice with regard to the accepted schedule for that task or project. Payment will be made within forty-five (45) days after receipt of an invoice

acceptable to the City, in accordance with the Florida Local Government Prompt Payment Act. If, at any time during the Agreement, the City shall not approve or accept the Proposer's work product, and agreement cannot be reached between the City and the Proposer to resolve the problem to the City's satisfaction, the City shall negotiate with the Proposer on a payment for the work completed and usable to the City.

10. Acceptance of Proposals / Minor Irregularities

The City reserves the right to accept or reject any or all proposals, part of proposals, and to waive minor irregularities or variances to specifications contained in proposals which do not make the proposal conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract or does not give a Proposer an advantage or benefit not enjoyed by other Proposers, does not adversely impact the interests of other firms or, does not affect the fundamental fairness of the solicitation process. The City also reserves the right to reissue a RFP.

The City reserves the right to disqualify Proposer during any phase of the competitive solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer.

11. Modification of Services

While this Agreement is for services provided to the department referenced in this RFP, the City may require similar work for other City departments. Successful Proposer agrees to take on such work unless such work would not be considered reasonable or become an undue burden to the Successful Proposer.

The City reserves the right to delete any portion of the work at any time without cause, and if such right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished and approved by the City on any portion of an Agreement resulting from this RFP, the Successful Proposer shall be paid for the work completed on the basis of the estimated percentage of completion of such portion to the total project cost.

The City may require additional items or services of a similar nature, but not specifically listed in the Agreement. The Successful Proposer agrees to provide such items or services, and shall provide the City prices on such additional items or services based upon a formula or method, which is the same or similar to that used in establishing the prices in their proposal. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items or services from other suppliers, or to cancel the Agreement upon giving the Successful Proposer thirty (30) days written notice.

If the Successful Proposer and the City agree on modifications or revisions to the task elements, after the City has approved work to begin on a particular task or project, and a budget has been established for that task or project, the Successful Proposer will submit a revised budget to the City for approval prior to proceeding with the work.

[Remainder of page intentionally left blank]

12. Non Exclusive Contract

Proposer agrees and understands that the Agreement shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services from another supplier at the City's sole option.

13. Contract Agreement

By submitting a proposal the Proposer agrees to all terms and conditions in this RFP, which incorporates all addenda, appendices, exhibits, and attachments.

The Successful Proposer will be required to execute the Agreement, a sample of which is attached hereto and made a part hereof. The Agreement will incorporate the Successful Proposer's and any subsequent information requested from the Successful Proposer by the City during the evaluation process.

The City will transmit the Agreement to the recommended proposer for execution. Proposer agrees to deliver two duly executed copies of the Agreement to the City within five (5) calendar days of receipt.

14. Subcontractors

If the Proposer proposes to use subcontractors in the course of providing services to the City, this information shall be a part of the proposal. Such information shall be subject to review, acceptance and approval of the City, prior to any award. The City reserves the right to approve or disapprove of any subcontractor candidate in its best interest and to require Proposer to replace subcontractor with one that meets City approval.

Proposer shall ensure that all of Proposer's subcontractors perform in accordance with the terms and conditions of the Agreement. Proposer shall be fully responsible for all of Proposer's subcontractors' performance, and liable for any of Proposer's subcontractors' non-performance and all of Proposer's subcontractors' acts and omissions. Proposer shall defend, at Proposer's expense, counsel being subject to the City's approval or disapproval, and indemnify and hold harmless the City and the City's officers, employees, and agents from and against any claim, lawsuit, third-party action, or judgment, including any award of attorney fees and any award of costs, by or in favor of any Proposer's subcontractors for payment for work performed for the City.

Successful Proposer shall require all of its subcontractors to provide the required insurance coverage as well as any other coverage that the Proposer may consider necessary, and any deficiency in the coverage or policy limits of said subcontractors will be the sole responsibility of the Successful Proposer.

15. Proposal Bond

Each proposal must be accompanied by a certified check or cashier's check for a proposal bond in the amount of five percent (5%) of the total proposal amount. The check or bond shall be made payable to the City of Delray Beach, Florida.

If the Successful Proposer fails or refuses to execute the Agreement or provide the necessary certificates of insurance, or Performance Bond following award, within the timeframes set forth herein, the City shall retain the entire proposal bond and disqualify the Proposer.

16. Performance Bond/Irrevocable Letter of Credit

The Proposer will execute and deliver to the City, within thirty (30) days after notification of award, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of the Proposer's bid amount. If the bond is on an annual coverage basis, renewal of each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing bond. A surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent must execute the Performance Bond. If a letter of credit is chosen, it must be in a form acceptable to the City, drawn on a bank acceptable to the City, and issued in favor of the City. Acknowledgment and agreement is given by both parties that the amount herein above set is not intended to be or shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Proposer to the City in the event of a material breach of the Agreement by the Proposer.

The City shall monitor the performance of all Proposers. If Proposer performance fails to meet the requirements specified within the contract, the City may without cause and without prejudice to any other right or remedy, terminate the contract whenever the City determines that such termination is in the best interest of the City.

17. Insurance Requirements

The Fire Department will pay the costs for liability insurance for the Medical Director. However, the Proposer shall supply proof of insurance, detailing terms and provisions of coverage, and must be received and approved by the City Risk Manager within 10 days of final execution of the Agreement.

Successful Proposer shall carry the following minimum types of insurance:

- A. Workers' Compensation Insurance: with the statutory limits
- B. Employers' Liability insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- C. Comprehensive General Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of B+VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage

cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Risk Management Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

18. Award of Agreement

An Agreement may be awarded by the City Commission. The City reserves the right to execute or not execute, as applicable, an Agreement with the Successful Proposer(s) that is determined to be in the City's best interests. The City reserves the right to award an Agreement to more than one Proposer, at the sole and absolute discretion of the City.

19. Unauthorized Work

The Successful Proposer(s) shall not begin work until an Agreement has been awarded by the City Commission and a purchase order and/or task order has been issued. Successful Proposer(s) agree and understand that the issuance of a purchase order and/or task order shall be issued and provided to the Successful Proposer(s) following Commission award; however, non-receipt of a purchase order and/or task order shall not prevent the Successful Proposer(s) from commencing the work once the City Commission has awarded the Agreement.

20. Uncontrollable Circumstances (Force Majeure)

The City and Successful Proposer will be excused from the performance of their respective obligations under the Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

- A.** The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
- B.** The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- C.** No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
- D.** The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Proposer will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

21. News Releases/Publicity

News releases, publicity releases, or advertisements relating to the Agreement or the tasks or projects associated with the project shall not be made by Proposers without prior City approval.

22. Agreement Period

The initial Agreement term shall commence on the date specified in the Agreement and shall expire five years from that date. The City reserves the right to extend the Agreement for three additional one year terms, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.

At the City's request, the Successful Proposer shall continue services beyond the final expiration date. This extension period shall not extend for more than one year beyond the final expiration date of the Agreement. The Successful Proposer shall be compensated at the rate in effect when this extension period is invoked by the City.

23. Agreement Coordinator

The City may designate an Agreement Coordinator whose principal duties shall be:

- Liaison with Successful Proposer.
- Coordinate and approve all work under the Agreement.
- Resolve any disputes.
- Assure consistency and quality of Successful Proposer's performance.
- Schedule and conduct Successful Proposer performance evaluations and document findings.
- Review and approve for payment all invoices for work performed or items delivered.

24. Substitution of Personnel

It is the intention of the City that the Successful Proposer's personnel proposed for the Agreement will be available for the Agreement Period. In the event the Successful Proposer wishes to substitute personnel, Successful Proposer shall propose personnel of equal or higher qualifications and all replacement personnel are subject to City approval. In the event substitute personnel are not satisfactory to the City and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the Agreement for cause.

25. Limitations on Communication-Cone of Silence: Proposers are advised that a Cone of Silence will be in effect during this RFP. The Cone of Silence is effective from the Due Date and Time until award is made by the City Manager and/or Commission. The Cone of Silence prohibits any communications, regarding this RFP, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the Agreement under this RFP, or any member of the Selection Committee. All correspondence regarding this RFP must be in writing and must be directed to the Chief Purchasing Officer, who is the only Person authorized to receive such documents.

Section 36.13 of the City Code provides "any person participating in a competitive solicitation issued by the City shall comply with Section 2-355 of the Palm Beach County Code of Ordinances." The County Code provides as follows:

- A. 'Cone of Silence' means a prohibition on any communication, except for written correspondence, regarding a particular request for proposals, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitations; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular Agreement.
- B. For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- C. The Cone of Silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The Cone of Silence applies to any person or person's representative who responds to a particular request for proposals, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposals, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- D. The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, Bidder negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the Cone of Silence shall not apply to Bidder negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- E. The Cone of Silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.
- F. The Cone of Silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves an Agreement, rejects all Bids or responses, or otherwise takes action which ends the solicitation process.
- G. Any Agreement entered into in violation of the Cone of Silence provisions in this section shall render the transaction voidable.

26. Office of the Inspector General

Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed city contracts, transactions, accounts and records. The City has entered into an Inter-local Agreement with Palm Beach County for Inspector General services. This agreement provides for the

Inspector General to provide services to the City in accordance with the City functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the City and receiving City funds shall fully cooperate with the Inspector General, including providing access to records relating to the Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the parties doing business with the City, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud.

Failure to cooperate with the Inspector General, or interference with or impeding any investigation shall be a violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

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SECTION 2: PROPOSAL RESPONSE REQUIREMENTS

BACKGROUND

Connection to the City network requires the Solution to support IP v4/6. All City departments are attached to the City's network with Intel computers with Microsoft Windows 7 or higher. Microsoft Windows 2012 R2 Servers are used for File and Print Services.

The Successful Proposer must be prepared to work with the City IT staff on each networked installation to ensure that all networked services are installed and functioning properly.

The City currently uses multiple Solutions, with the main solution being Kronos® Telestaff. An Enterprise Resource Planning (ERP) solution has been solicited by the City which will include Human Resources, Finance and Payroll modules. At the time in which this RFP is issued, the City has not made an award decision for the ERP solution. Information regarding the City's award for the ERP solution will be provided to Proposers via an addendum.

A. MINIMUM QUALIFICATIONS

Each Proposer shall submit information and documentation requested that confirms it meets the following minimum qualification requirement(s):

- i. Must be registered with the State of Florida, Division of Corporations to do business in Florida.

No documentation is required. The City will verify registration.

- ii. Must have been in business for a minimum of seven years.

Provide supporting documentation (state, county, or city business or occupational license) that confirms Proposer has been in business for a minimum of seven years.

- iii. Must have completed a minimum of two time and attendance hardware and software implementations for a government agency that began since May 1, 2009. NOTE: Completed is defined as full completion of all implementation milestones.

Provide the following information regarding the two qualifying time and attendance hardware and software implementations.

- (1) **Name of Client**
- (2) **Address of Client (City/State)**
- (3) **Client contact name**
- (4) **Contact phone number**
- (5) **Contact email address**
- (6) **Dates of service (Begin/End)**
- (7) **Type of software implemented**

[Remainder of page intentionally left blank]

B. PROPOSER STATEMENT OF ORGANIZATION

Provide information on Proposer as follows:

- i. Full legal name of organization (as shown on Florida Division of Corporations registration) including any dba.
- ii. State of organization or incorporation.
- iii. Ownership structure of Proposer's company.
(e.g., Sole Proprietorship, Partnership, Limited Liability Corporation, Corporation)
- iv. Federal Identification Number.
- v. Contact information for Proposer's corporate headquarters.
Address
City, State, Zip
Phone
- vi. Contact information for Proposer's local office (if any).
Address
City, State, Zip
Phone
- vii. List of officers, owners and/or partners, or managers of the firm. Include names, business addresses, and phone numbers
- viii. Any additional information regarding Proposer's organizational structure that Proposer wishes to supply to augment its proposal
- ix. Contact information for Proposer's primary representative during this RFP process.
Name
Phone
E-mail
Mailing Address
City, State, Zip
- x. Contact information for Proposer's secondary representative during this RFP process.
Name
Phone
E-mail
Mailing Address
City, State, Zip

C. EXPERIENCE

- i. Submit a detailed narrative description documenting overall background and experience to include, but not limited to, the following:
 - (1) Number of years Proposer has been in business
 - (2) General background and experience of Proposer
 - (3) General background and experience of the proposed key personnel to be assigned to the City's project
 - (4) Awards, certifications, and/or related recognition of Proposer and Proposer's team
- ii. Submit a detailed narrative description documenting Proposer's specific experience in implementing the Solution proposed for the City's project including, but not limited to, the following:
 - (1) Knowledge of the hardware and software proposed
 - (2) Experience with the hardware and software proposed
 - (3) Experience in implementations
 - (4) Experience specifically related to training
 - (5) Experience with municipal fire and police departments and civil service requirements
- iii. Submit a detailed narrative description documenting experience of the key personnel to include technical lead, account manager, trainers, implementers, and on-going support lead proposed by Proposer for the City's project including, but not limited to the following:
 - (1) Knowledge of the hardware and software proposed
 - (2) Experience in implementations, training, support
 - (3) Resume for each individual proposed to include the following;
 - a. Degrees earned
 - b. Certifications and training
 - c. Work experience (employer, job title, dates of employment, and description of job duties)
- iv. In a table or spreadsheet format, submit a list of up to fifteen (15) time and attendance systems implementations completed by Proposer since May 1, 2011. Include the following information:
 - (1) Organization name
 - (2) Dates of service (start/end)
 - (3) Implementation details
 - a. Name and version of the software implemented
 - b. Brand and model of the hardware implemented
 - c. Number of pay and leave categories
 - d. Number of employees processed for each payroll period
 - e. If software was a web-based application
 - f. If software provided for flexible scheduling
- v. In a table or spreadsheet format, submit client references for whom Proposer has provided time and attendance software and hardware in the past five (5) years and who are agreeable to respond to a request from the City regarding Proposer. NOTE: Proposer may list companies shown above in Item iv. as client references. Each client reference should include the following:

- (1) Organization name
- (2) Contact name(s)
- (3) Contact email address
- (4) Address
- (5) Telephone and fax numbers
- (6) Dates of service (start/end)
- (7) Scope of work (brief description)

D. TECHNICAL APPROACH

- i. Provide a list of authorized channel partner relationships
- ii. Provide a detailed narrative description of the proposed approach and methodology to include the connectivity requirements of the equipment being proposed including the power requirements, network protocol(s) and software.
- iii. Detail the Solution proposed
- iv. Describe methodologies for engaging with City representatives while in the course of performing the duties

E. IMPLEMENTATION APPROACH

- i. Include Proposer's strategies and approach to the time and attendance hardware and software implementation and on-going support
- ii. Submit a list of Proposer's current projects and known future projects that will be occurring during the implementation of the City's project to include project title, project start and end dates, project manager and technical lead assigned
- iii. Provide a schedule and timeline to include the start date, completion date, implementation
- iv. Training to be provided to include types (e.g., classroom, in-person, on-line), location and content
- v. Support to be provided by Proposer during implementation

F. FUNCTIONAL REQUIREMENTS

Describe the functionality of the proposed Solution software as it relates to the items listed below. Note: Proposers who are invited to interviews and presentations with the City will be required to provide a full, live demonstration of the functionality of the proposed solution, including these areas of functionality, which will be considered in the evaluation of Proposals.

- i. Ability to retrieve real time information
- ii. User friendly functions
- iii. Loading of data from the existing system
- iv. Upgrades and patching
- v. Creation of custom or ad hoc reports
- vi. Service administration
- vii. Time clocks
- viii. Integration with tablets, mobile devices, email, VoIP telephones, desktop PCs, and POS devices

G. ON-GOING SUPPORT/MAINTENANCE

- i. Include a copy of Proposers Service Level Agreement (SLA)
- ii. Include a copy of the proposed software manufacturer's contract if required to be incorporated into Exhibit B, Sample Agreement, for software license and/or maintenance and support
- iii. Include a copy of the proposed hardware manufacturer's contract if required to be

- incorporated into Exhibit B, Sample Agreement, for maintenance and support
- iv. Detail Proposer's response times and resolution times
 - v. Detail the support hours and the location(s) from which support will be provided
 - vi. Describe the on-going post implementation support

H. SCHEDULE OF PRICING

- i. Proposers should submit best pricing for Solution. Pricing must be all inclusive and include hardware, software, implementation, support, travel, training and any residual costs to indicate Total Cost of Ownership. Submit pricing in Exhibit A, Schedule of Pricing. Do not use any other form or format for submitting pricing.
- ii. Specify the rate for fees and charges of maintenance service outside normal business hours of 7:00 AM to 6:00 PM to service Solution components.

[Remainder of page intentionally left blank]

SECTION 3: SCOPE OF WORK

SCOPE: Successful Proposer will provide a comprehensive Solution with integrated biometrics to fulfill the time accounting, reporting and controlling needs of the City. The Solution with clocks shall support two-factor verification, biometrics, ODBC connectivity and SQL Server 2012 (or greater) databases.

REQUIREMENTS: The Solution requirements are as follows:

A. SYSTEM REQUIREMENTS

- ii. Must fully integrate with the City's current legacy system the City's Enterprise Resource Planning (ERP) solution that will be implemented over the next eighteen (18) months. The Solution implementation shall be performed in conjunction with the ERP implementation.
- iii. Must allow proximity detection, and allow for punches to be generated by telephone, computer, and or biometric clock (to allow for mobility work).
- iv. Must allow for de-centralized data entry (log in via telephone, clock, etc.).
- v. Must support full open database connectivity (ODBC) to Microsoft structured query language (SQL) Server 2012 SP3 (or newer) database systems.
- vi. Must have functional built-in import/export functionality for schedules, punches, reports and financial data both in real-time and on a scheduled basis, as defined by the City.
- vii. Must allow the City's ERP system to feed specific information to the Solution each pay period for each employee, including but not limited to the following: punch in and out data, biometric data and employee ID data.
- viii. Must communicate, each pay period, back to the City's ERP system all approved time and attendance records which have been approved by both departmental supervision and the Payroll Department.
- ix. Must provide a detailed audit trail whereby Payroll and Audit department staff may track attendance records and changes related to individual or group timekeeping records.
- x. Must provide multiple levels of supervisory approval via workflow which supports groups and sub-groups from the City.
- xi. Must allow authorized employees to roam punch (be able to punch in or out at more than one clock location).
- xii. Must provide pre-defined security roles and allow for customized user-based security roles to control access to specific departments, groups, and levels of specific employee and departmental information.
- xiii. Must allow employees and supervision to enter multiple pay or job codes during the work day. The pay or job codes must have a relation to the same or similar job codes in The City's ERP system. The City prefers a system which can do so without remapping or cross referencing codes.
- xiv. Must allow for the scheduling of employees who have multiple shifts and support multiple types of days, schedules and pay types, including: Differentials, Premium pay, Call Out, Standby, Workers Compensation, Shift Swap, Kelly Day's, Vacation Days, Sick Days, Comp Days, etc.
- xv. Must allow for different rates of pay for each employee based on pay and job code.
- xvi. Must be configured to allow for the following configuration options:
 - 1.xvi.1.1 Collect time clock data daily
 - 1.xvi.1.2 Perform nightly database backups
 - 1.xvi.1.3 Check/Update terminal times as necessary
 - 1.xvi.1.4 Archive, then discard punch data weekly

- xvii. Must be scalable; allowing for additional clock terminals to be added as well as additional departments, pay codes, employees, job codes, and other identifiers.
- xviii. Must come with a comprehensive maintenance agreement which covers system, end-user and software support. This maintenance agreement must cover the City for all future software upgrades so that it is not required to re-buy the product or pay an upcharge for a new version.
- xix. Must comply with the City policies related to time and attendance, as well as the Fair Labor Standards Act (FLSA).

B. CLOCK REQUIREMENTS

- i. Must support two-factor Biometric authentication consisting of the employees thumb print and entering their employee number.
- ii. Must be able to cache approved working schedules at both the clock and system level to prevent unauthorized punching in/out times.
- iii. Must support network connectivity at 10/100 Mbps and 1 Gbps on Category 5 Ethernet standard.
- iv. Must continue to collect and cache employee punch data should the Time Clock lose its ability to communicate with the back-end Time & Attendance system/server until communication is restored and punches have been synced.
- v. Must cache all punches, if offline, until communication is restored.
- vi. Must push punches to the Solution software at regular intervals throughout each day.
- vii. Must be able to run via Power over Ethernet (PoE).

C. SUPPORT AND MAINTENANCE

Successful Proposer shall:

- i. Perform full-service support for all hardware and application software listed in the response during normal business hours (Monday through Friday, 7 a.m. to 6 p.m.) within the pricing proposed.
- ii. Provide telephone support for City staff questions. This phone access must be available to the City at no additional charge for as long as the Proposer is maintaining the hardware and software.
- iii. Perform all preventative maintenance services on all hardware and application software, including upgrades, firmware updates, and security patches.
- iv. Provide a four-hour service response time, two-hour call-back response time, and four-hour on-site response time, when requested by the City. The four-hour, on-site response time is calculated from the time the first phone call is made to selected Proposed for support until a certified technician is on site.
- v. Only dispatch certified repair technicians to all City facilities.
- vi. Guarantee a loaner bio-metric clock anytime a City bio-metric clock is inoperable for more than one business day. The loaner bio-metric clock will remain on site at the City until the City's bio-metric clock is repaired or replaced and returned to service. If a loaner is not available from Successful Proposer's inventory, Successful Proposer will provide a new bio-metric-clock on loan until the City's clock is repair/replaced and returned to service.
- vii. If a City bio-metric clock has four repeat service calls for the same issue, Successful Proposer shall temporarily replace the bio-metric clock with a like biometric clock and make the necessary repairs to return the City's clock to full operation without cost to the City.

D. Network Connectivity

All City departments are attached to the City network with Intel computers with Microsoft Windows 7 or higher. Microsoft Windows 2012 R2 servers are implemented in a HyperV environment. Successful Proposer must ensure connection to the City network. Solution must support IP v4/6 and Microsoft HyperV server.

The Successful Proposer shall work with the City IT staff on each networked installation to ensure that all networked services are installed and functioning properly.

E. Equipment Uptime

Each device provided by the Successful Proposer(s) shall perform the intended functions, operate as specified in this RFP, and properly interface with the Solution application software as well as the City's ERP system. Solution must be functional and operational a minimum of 98% of the available work time averaged over a consecutive three-month period. Preventative maintenance time shall not be included in the minimum. Any component of the Solution that does not meet the 98% availability measurement for any three consecutive month periods shall be replaced by Successful Proposer with new equipment and or components.

F. Remedial and Preventative Maintenance and Supplies

- i. Successful Proposer shall provide preventative and remedial and preventative maintenance service to keep the equipment in good working order during City normal business hours of 7:00 A.M. through 6:00 P.M. excluding City holidays.
- ii. Successful Proposer shall perform on-call remedial maintenance on an as needed basis as determined by the City and/or as determined by the bio-metric clock diagnostics.
- iii. Successful Proposers shall maintain inventory of spare clocks to be available to the City when City clocks are inoperable and repairs are necessary to keep the Solution operating.
- iv. All maintenance shall be performed by factory-trained technicians.
- v. The Successful Proposer shall only use OEM replacement parts and authorized supplies in the repair of City System components.

G. Installation, Inspection, and Acceptance

The Successful Proposer will coordinate the installation phase with City IT staff. Upon completion of installation by Successful Proposer, the City shall utilize the Solution for thirty (30) days to determine that all functions operate in the City's environment without issue or failure. The Successful Proposer will be notified of all identified issues or failures.

Prior to final acceptance, if any component of the Solution (which includes the bio-metric clocks) does not perform to the satisfaction of City staff in accordance with the requirements stated in this RFP, the issue or failure shall be rectified by Successful Proposer at Successful Proposer's expense. The contract may be terminated if resolution of issues or failures is not resolved to the City's satisfaction. Upon Successful performance of the Solution during this thirty (30) day period, the Solution will be finally accepted as fully installed and operational.

H. User Training

The Successful Proposer shall provide a minimum of one, one-hour orientation and training for the end-user department staff on all functionality for the bio-metric clocks deployed into service at the City. A minimum two day session will be provided to demonstrate and train

Finance/Payroll Department how to leverage the Solution software to run reports, review punches, and other functionality and capabilities. Training will be held at City specified locations in Delray Beach. Upon request by the City, Successful Proposer shall provide additional staff training, up to 20 hours per year, at no cost to the City.

I. Reporting

Successful Proposer shall provide quarterly electronic service reports in Microsoft Excel® by the 15th of month following the end of each quarter, to the City to include at a minimum:

- Equipment ID No., Serial No., Make, Model and location of all bio-metric clocks
- Average service response time for any service calls during the reporting period
- Percentage of operational up-time of the Solution during the reporting period
- Average number of service calls per month during the reporting period
- Average days between failures during the reporting period
- Average downtime and uptime during the reporting period
- Average response time during the reporting period
- Average on-site response time during the reporting period
- Average repair times after receiving original request for maintenance during the reporting period

J. Data Security

The City is required to comply with local, State and federal privacy statutes regarding data. For this reason, the City must have the ability to clear document data from non-volatile memory such as hard drives, solid state memory, and other sources on a regular basis and especially before a device/machine is to be removed from City service.

Successful Proposer must ensure that any City Solution component is not removed before data is cleared from the memory. This can be accomplished by (1) deleting the data; (2) removing the hard drive before the component leaves the premises; or (3) data may be deleted on an ongoing basis by configuring the machine to delete and overwrite the images after they are no longer required. The data overwrite is the City preferred method as the images will not be kept at all and will therefore not raise security concerns.

Regardless of the method used, all clocks must come into the City with some sort of security. The City's Network Security Standards state that any Successful Proposer that comes into possession of City data must act as an extension of the City and handle it in a confidential manner. In this case, the Successful Proposer must notify the City immediately if it is in possession of City data and not share the data with anyone. In addition, the City Network Security Standards require that all wireless devices have all security features turned on and device/machines fitted with wireless capabilities must be locked down to ensure the confidentiality of the data being transmitted to and from the machine and any data that may be in memory.

Prior to de-installation of any bio-metric clock within the City, the Successful Proposer shall remove cached punch, bio-metric or employee ID information from each bio-metric clock memory at no charge to the City. The Successful Proposer, at a minimum, will provide a form indicating a data security device has been installed on the clock. The Successful Proposer must also provide a third party certificate verifying the data security device removes any data stored on the bio-metric clocks.

SECTION 3: FORMS AND INSTRUCTIONS

A. AUTHORIZATION TO BIND PROPOSER

Each proposal must be signed by a Person who is legally authorized to bind the Proposer to the proposal. Each proposal shall remain valid for at least two hundred and seventy (270) days after the Due Date.

Proposals by corporations must be executed in the corporate name by the President or Vice-President (or other corporate officer if accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested to by the Proposer's Secretary or an Assistant Secretary. The corporate address and state of incorporation shall be shown below the signature.

Proposals by partnerships must be executed in the partnership name and signed by a partner. His or her title must appear under his or her signature and the official address of the partnership must be shown below the signature.

B. PROPOSAL FORMAT

Each proposal shall include all the requested information. Proposals shall be organized in chapters, as indicated in Table 2. All pages are to be consecutively numbered. If a form is provided and there is insufficient space for a response on the form, the response may be continued on a blank page immediately following the form. The additional pages shall be numbered the same as the form, with the addition of the letter "a", "b", "c", etc. If a form is provided and additional copies of the form are needed, the form may be copied by the Proposer. The copied pages shall be numbered the same as the form, with the addition of the letter "a", "b", "c", etc.

Proposal responses to this RFP must be complete and unequivocal. In instances where a response is not required or a question is not applicable to the proposal, a response such as "no response required" or "not applicable" shall be provided.

Table 2 - Proposal Format

Chapter 1	Letter of Intent: Briefly state the Proposer's understanding of the services to be rendered, and make a positive commitment to perform according to the requirements noted in this RFP but should not exceed two (2) pages. Proposal Submittal Signature Page
Chapter 2	Proposer's Statement of Organization (Section 2, Item B)
Chapter 3	Public Entity Form, Drug Free Workplace Form, Conflict of Interest Form
Chapter 4	Acknowledgement of Addenda Form
Chapter 5	Proposal Response Requirements (Section 2, Items A, C, D, E, F, G, H)
Chapter 6	Evidence of Insurance, Professional Licenses, and Certificates: Certificate of Insurance showing

	coverage, forms, limits. Actual insurance certificates will be required from recommended contractor, prior to award. Submit a copy of all Licenses, Certificates, Registrations, and Permits required to perform the work that Proposer and/or its staff possess.
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[Remainder of page intentionally left blank]

RESPONSE CHECKLIST

A responsive Proposer means a Proposer that has submitted a proposal that conforms in all material respects to the requirements in the RFP. The CPO or designee will determine whether each Proposer correctly submitted all of the necessary forms and documents. The purpose of this checklist is to assist Proposers in completing their Proposals and ensuring that all required forms and information is submitted. Do not include checklist with your Proposal submittal.

- ☐ Letter of Intent
- ☐ Statement of Organization Section
- ☐ Proposal Requirements
 - ☐ Section A, Qualifications
 - ☐ Section C, Experience
 - ☐ Section D, Technical Approach
 - ☐ Section E, Implementation Approach
 - ☐ Section F, Functional Requirements
 - ☐ Section G, On-going Support/Maintenance
 - ☐ Section H, Schedule of Pricing
- ☐ Proposal Submittal Signature Page
- ☐ Public Entity Crimes Form
- ☐ Drug Free Workplace Form
- ☐ Conflict of Interest Form
- ☐ Acknowledgement of Addenda Form
- ☐ Evidence of Insurance, Professional Licenses, and Certificates

Proposal Submittal Signature Page

By signing this Proposal, the Proposer certifies that it satisfies all legal requirements as an entity to do business with the City, including all Conflict of Interest and Code of Ethics provisions.

Firm Name: _____

Street Address: _____

Mailing Address (if different from Street Address): _____

Telephone Number(s): _____

Fax Number(s): _____

Email Address: _____

Federal Identification Number: _____

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

By signing this document, the Proposer agrees to all terms and conditions of this RFP which includes the Sample Agreement.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL.

(Remainder of page intentionally left blank)

Public Entity Crimes

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors 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 on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, 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 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

[Remainder of page intentionally left blank]

Drug-Free Workplace

If identical tie bids exist, preference will be given to the vendors who submit a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. The drug-free workplace preference is applied as follows:

IDENTICAL TIE BIDS: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program.

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

- 1) This firm publishes a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) This firm informs employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) This firm gives each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), this firm notifies the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) This firm imposes a sanction on or requires the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) This firm will continue to make a good faith effort to maintain a drug-free workplace through implementation of this section.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Conflict of Interest Disclosure Form

The award of this RFP/bid/contract is subject to the provisions of Chapter 112, Florida Statutes and Palm Beach County Ordinance Section 2-443. All proposers/bidders/contractors must disclose: the name of any officer, director, or agent who is also an employee or relative of an employee of the City of Delray Beach.

Furthermore, all proposers/bidders/contractors must disclose the name of any City employee or relative(s) of a City employee who owns, directly or indirectly, an interest in the proposers/bidders/contractors firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for key personnel involved in the award of this RFP/bid/contract.

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

☐ To the best of our knowledge, the undersigned firm has no potential conflict of interest as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

☐ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this RFP.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Acknowledgment of Addenda

The Proposer hereby acknowledges the receipt of the following addenda, which were issued by the City and incorporated into and made part of this RFP. It is the sole responsibility of the Proposer to ensure that all addenda have been received and receipt of each has been acknowledged. Failure to submit acknowledgement of each addendum issued may result in the Proposer being deemed non-responsive.

ADDENDUM NUMBER	DATE RECEIVED

Signature of Proposer's Agent

Title

Printed Name

Date

RFP 2016-093L Time and Attendance Solution

Exhibit A

Schedule of Pricing

Item No.	Primary Hardware	Estimated QTY	Unit Price	Extended Price	Comments
1	Biometric Clock	28	\$	\$	
SUBTOTAL			\$	\$	

Item No.	Supportive Hardware (if necessary)	Estimated QTY	Unit Price	Extended Price	Comments
2			\$	\$	
3			\$	\$	
4			\$	\$	
5			\$	\$	
6			\$	\$	
7			\$	\$	
SUBTOTAL			\$	\$	

RFP 2016-093L Time and Attendance Solution

Exhibit A

Schedule of Pricing

Item No.	Software	Estimated QTY	Unit Price	Extended Price	Comments
8			\$	\$	
9			\$	\$	
10			\$	\$	
11			\$	\$	
12			\$	\$	
13			\$	\$	
SUBTOTAL			\$	\$	

RFP 2016-093L Time and Attendance Solution

Exhibit A

Schedule of Pricing

Item No.	Implementation Fees	Estimated QTY	Unit Price	Extended Price	Comments
14			\$	\$	
15			\$	\$	
16			\$	\$	
17			\$	\$	
18			\$	\$	
19			\$	\$	
SUBTOTAL			\$	\$	

RFP 2016-093L Time and Attendance Solution

Exhibit A

Schedule of Pricing

Item No.	Training Fees	Estimated QTY	Unit Price	Extended Price	Comments
20			\$	\$	
21			\$	\$	
22			\$	\$	
23			\$	\$	
24			\$	\$	
25			\$	\$	
SUBTOTAL			\$	\$	

RFP 2016-093L Time and Attendance Solution

Exhibit A

Schedule of Pricing

Item No.	Description	Year	Price per Year	Comments
26	Required Support, Maintenance, Software/Hardware Assurance	1	\$	
27	Optional Support, Maintenance, Software/Hardware Assurance	2	\$	
28	Optional Support, Maintenance, Software/Hardware Assurance	3	\$	
29	Optional Support, Maintenance, Software/Hardware Assurance	4	\$	
30	Optional Support, Maintenance, Software/Hardware Assurance	5	\$	
31	Optional Support, Maintenance, Software/Hardware Assurance	6	\$	
32	Optional Support, Maintenance, Software/Hardware Assurance	7	\$	
33	Optional Support, Maintenance, Software/Hardware Assurance	8	\$	
TOTAL			\$	

NOTE: Upgraded hardware and software shall be covered by the support/maintenance Agreements.

GRAND TOTAL (MINUS ITEMS 27-33)	\$
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AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND

FOR

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

_____, a Florida corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach _____ Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the

administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 All duties, obligations, and responsibilities of Second Party required by this Agreement shall be completed no later than **[time span]** after full contract execution by the City of Delray Beach. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party

shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4

COMPENSATION

- 4.1 City will pay Second Party, in the manner specified in Section 4.3, the total amount of _____ Dollars (\$_____) for work actually performed and completed pursuant to this Agreement and _____ Dollars (\$_____) for all reimbursables provided for in Section 4.2, which amounts shall be accepted by Second Party as full compensation for all such work and expenses. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.2 REIMBURSABLES

- 4.2.1 In accordance with and pursuant to the City's procurement code and subject to the limitations set forth below, reasonable expenses, which are directly attributable to the Project may be charged at no more than actual cost. The maximum sum which may be charged for expenses shall not exceed _____ Dollars (\$_____), and shall be limited to the following:

- a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses to locations outside the Miami-Dade/Broward/Palm Beach County area or from locations outside the Miami-Dade/Broward/Palm Beach County area will not be reimbursed unless specifically authorized in advance and in writing by the Contract Administrator. Transportation expenses to and from locations within the Miami-Dade/Broward/Palm Beach County area will not be reimbursed.

- b) Cost of printing drawings and specifications which are required by or of Second Party to deliver services set forth in this Agreement.

4.2.2 A detailed statement of expenses must accompany any request for reimbursement. Expenses other than auto travel must be documented by copies of paid receipts, checks, or other evidence of payment.

4.2.3 Second Party acknowledges that the dollar limitation set forth in Section 4.2.1 is a limitation upon, and describes the maximum extent of, City's obligation to reimburse Second Party for expenses, but does not constitute a limitation, of any sort, upon Second Party's obligation to incur such expenses or perform the services identified in Article 2.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Second Party shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "B"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of the form, explaining the good cause why payment has not been made.

4.3.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.

4.3.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself

from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Second Party at:

ARTICLE 5

INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

ARTICLE 6

INSURANCE

6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "C" in accordance with the terms and conditions stated in this Article.

- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "C." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Second Party uses a subconsultant or subcontractor, Second Party shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7

TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is

necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8

NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this

Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

ARTICLE 9

MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within seven (7) days of termination of this Agreement by

either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Second Party shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

- 9.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City.
- 9.2.2 Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- 9.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- 9.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Second Party at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Second Party.
- 9.2.5 If Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a

contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City Manager
City Hall
100 N.W. 1st Avenue
Delray Beach, Florida 33444

For Second Party:

9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially

antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND**

PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement,

whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20____, and Second Party, signing by and through its _____, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By _____
Cary D. Glickstein, Mayor

_____ day of _____, 20____.

APPROVED AS TO FORM:

City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA
AND

SECOND PARTY

By _____
(Sign name)

(Print name, Title)

____ day of _____, 20____

WITNESS:

(Sign name)

(Print name)

WITNESS:

(Sign name)

(Print name)

(SEAL)

EXHIBIT A

SCOPE OF SERVICES

SAMPLE

EXHIBIT B**CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS**

RFP/RLI/Bid/Contract No. _____

Project Title _____

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or
Supplier's name
and addressDate of disputed
invoiceAmount in
dispute

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated _____, 20____

ContractorBy _____
(Signature)By _____
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed, or stamped

(Title or rank)

My commission expires:

(Serial number, if any)

EXHIBIT C

INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH

Second Party shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Delray Beach Risk Manager. If you have any questions call (561) 243-7150.

The following insurance coverage shall be required.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute 440 and including Employers Liability coverage, regardless of the size of your firm. Second Party further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course and scope of their employment.
- B. General liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually, providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.
- C. Motor Vehicle Liability Insurance covering all vehicles associated with Second Party operations to include all owned, non-owned and hired vehicles.

The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.
- D. The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage, non-renewal or cancellation.

Second Party shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above. If any of the above coverages expire during the term of this Agreement, Second Party will provide a renewal certificate at least ten (10) days prior to expiration.

Mail to: City of Delray Beach, Attn. Risk Manager, 100 N.W. 1st Avenue, Delray Beach, Florida 33444 with a copy to Assistant City Manager, 100 N.W. 1st Avenue, Delray Beach, FL 33444