

RESOLUTION NO. 2023- 150

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF AMENDMENT NUMBER 6 TO CONTRACT RP783 BETWEEN ST. JOHNS COUNTY AND FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR LIFEGUARD SERVICES AT ANASTASIA STATE PARK FOR THE PEAK SUMMER SEASON; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AMENDMENT ON BEHALF OF THE COUNTY.

WHEREAS, St. Johns County (“County”) and Florida Department of Environmental Protection (FDEP) entered into Contract No. RP783 (“Contract”), effective May 25, 2017, to provide lifeguard services through St. Johns County Marine Rescue for Anastasia State Park for the peak summer season between Memorial Day weekend and Labor Day weekend; and

WHEREAS, the Contract provides that FDEP may increase the funding amount from year to year based on satisfactory performance and annual appropriations by the Florida Legislature; and

WHEREAS, Amendment No. 6 to the Contract increases the funding amount from \$253,530.42 to \$302,910.02 (an increase of \$52,379.60) to cover the period for lifeguard services from May 26, 2023 through September 4, 2023.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution and are adopted as findings of fact.

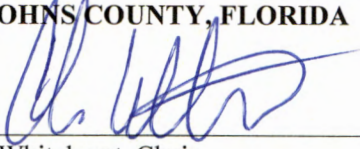
Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of Amendment No. 6 to DEP Contract No. RP783 and authorizes the County Administrator, or designee, to execute said Amendment on behalf of St. Johns County substantially in the same form as attached hereto.

Section 3. To the extent there are typographical, scrivener, or administrative errors or omissions that do not change the tone, tenor, or context of this Resolution, Amendment No. 6 may be revised without subsequent approval by the Board of County Commissioners.

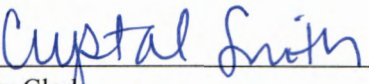
Section 4. This Resolution shall be effective upon adoption by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 2nd day of May 2023.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: 
Christian Whitehurst, Chair

ATTEST: Brandon J. Patty,
Clerk of the Circuit Court and Comptroller

By: 
Deputy Clerk

Rendition Date MAY 02 2023



ATTACHMENT A
SCOPE OF SERVICES
ANASTASIA STATE PARK OCEAN LIFEGUARD SERVICES

1. Scope of Services. The Contractor shall be responsible for providing lifeguard services, through its County Marine Rescue, which is part of the St. Johns County Fire and Rescue Department, for Anastasia State Park for the area 0.5 miles south of the beach entrance ramp to 3.5 miles north of the beach entrance ramp. The Contractor will set up lifeguard stands as shown on the map appearing on the Anastasia State Park Lifeguard Services Map (page 3 of Attachment A), traditionally the primary use area. One stand will be placed just south of the beach entrance ramp. The Contractor lifeguards may need to adjust the placement of the stand based on their experience of the tides and the number of visitors using the area.

The Contractor shall recruit, train, employ, and staff Anastasia State Park with a lifeguard service that is consistent with the standards established by the United States Lifesaving Association and St. Johns County. The Contractor shall equip all lifeguard towers and patrol vehicles with rescue, medical, and communications equipment as specified by the minimum equipment standards promulgated by the United States Lifesaving Association.

From a pool of lifeguards, two (2) lifeguards, one being a Lifeguard III and the other being a Lifeguard II, will be assigned to Anastasia State Park for the operating hours of 10:00 a.m. to 6:00 p.m. local prevailing time. Lifeguard III shall not work more than 10 hours in a workday and Lifeguard II not more than 8 hours in a workday. An individual lifeguard selected to work at Anastasia State Park from the pool of lifeguards shall not be scheduled for more than, nor work more than, forty (40) hours in a workweek. The following schedule shall be followed by the Contractor.

Position	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total
LG III	10	10	10	10	10	10	10	70
LG II	8	8	8	8	8	8	8	56
Totals	18	18	18	18	18	18	18	126

Note: Position titles: LG = Lifeguard

2. Deliverables: Daily Operations:

A Weekends & Holidays:

- One (1) Lifeguard III: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicle will be on continuous patrol within the visual and/or communication range of beachfront staff.
- One (1) Lifeguard II: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

B. Weekdays (excluding holidays):

- One (1) Lifeguard III: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicle will be on continuous patrol within the visual and/or communication range of beach front staff.
- One (1) Lifeguard II: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

1. **Payment Schedule:**

Performance Period	Payment Amount	Invoice Due Date
May 26, 2017 – June 30, 2017	\$14,359.16	July 7, 2017
July 1, 2017 – September 4, 2017	\$25,345.63	September 30, 2017
May 25, 2018 – June 30, 2018	\$14,602.75	July 9, 2018
July 1, 2018 – September 3, 2018	\$25,612.63	September 30, 2018
May 24, 2019 – June 30, 2019	\$16,496.22	July 8, 2019
July 1, 2019 – September 2, 2019	\$28,390.06	September 30, 2019
May 22, 2020 – June 30, 2020	\$17,615.68	July 10, 2020
July 1, 2020 – September 7, 2020	\$31,282.05	September 30, 2020
July 1, 2021 – September 6, 2021	\$30,986.65	September 30, 2021
May 27, 2022 – June 30, 2022	\$16,828.29	July 11, 2022
July 1, 2022 – September 5, 2022	\$32,011.30	September 30, 2022
May 26, 2023 – June 30, 2023	\$18,392.80	July 7, 2023
July 1, 2023 – September 4, 2023	\$33,986.80	September 30, 2023
Total	\$305,910.02	

Each invoice shall include documentation by timesheets or other auditable means, of the total number of hours worked by each individual lifeguard for the billing period.

It is hereby understood and agreed by both parties that the Contractor shall not be expected to provide lifeguard services in situations as described in paragraph 32 (**Force Majeure**) of the Contract. The Contractor shall submit a report documenting the dates in which lifeguard services were not provided due to a Force Majeure. In addition to the dates, the reason for the Contractor's inability to provide the services must be documented. Said documentation shall be submitted with each invoice.

Any and all equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor. The above payment schedule includes all personnel and incidental costs associated with the Contractor's performance of the services described herein. No additional compensation shall be provided.

2. **Reports**

- **Monthly Reports:** The Contractor shall provide monthly reports to the Department's Contract Manager, within five (5) days of completion of each calendar month, which summarizes the activities performed during the month. The report shall include information on the number of citizen assists made and the nature of the assistance, the number of emergency actions taken and the nature of the emergency, and the beach closures occurring during the month and the reason for such closures.
- **Final Report:** The Contractor shall submit a final report to the Department's Contract Manager, documenting all lifeguards service and activities performed during the Contract Period. Said documentation shall be submitted with the final invoice specified above.

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ATTACHMENT A
SCOPE OF SERVICES
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FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Contract Action Form (CAF)

Submit completed form to: Contracts_Adm@FloridaDEP.gov

This form is required to initiate a contract change or action to an existing agency contract (N/A for a MFMP Purchase Order). If the request is for a new contract, only complete the Business Needs Analysis Form (BNA), DEP 55-197.

Below are the contract actions available for selection:

- **Amendment** - changes to the existing terms or conditions of the contract are necessary.
- **Renewal** - renewing for an additional contract period prior to the initial contract period expiring; renewal options must be clearly identified in the initial contract, must be in writing and subject to the same terms and conditions of the initial contract and any written amendment.
- **Extension** - an extension of time (not to exceed 6 months); an extension can only be used once unless the failure to meet the criteria set forth in the contract is due to events beyond the control of the contractor, section 287.057(12), F.S.

Contract Number: RP783

Date: 03/02/2023

Division/District/Office: Recreation & Parks District 3

Contractor's Name: St. Johns County Board of County Commissioners c/o St. Johns County Fire and Rescue Department

Action Type: Amendment Renewal Extension

Based on the action type selected above, describe the changes needed:

FY 22-23 - End Date for FY 22-23 - May 26, 2023 - June 30, 2023 -	\$18,392.80	
FY 23-24 - End Date for FY 23-24 - July 01, 2023 - September 4, 2023 -	\$33,986.80	
Total Contract Amount	\$52,379.60	Outsourcing
Renewal of Contract to begin on 05/26/2023 through 09/04/23		
Increasing amount of contract from \$253,530.42 TO \$302,910.02		

If the Extension option is selected, a justification is required:

Select the applicable box below if this change requires special approval.

- Quality Assurance (required, if any sampling or analysis to be performed)
- Information Technology (IT)
- N/A

Current Contract Amount	<u>\$253,530.42</u>
Contract Action Amount (+, -)	<u>+\$52,379.60</u>
Total Amended Contract Amount	<u>\$302,910.02</u>



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Contract Action Form (CAF)

Will this contract action increase the total amount of the agreement to \$1 million or greater? Yes No
If Yes, Office of Policy and Budget (OPB) approval is required (DEP 55-329 OPB Approval Template).

Approvals

Contract Manager:	Michael Watkins	Digitally signed by Michael Watkins Date: 2023.03.09 13:05:31 -05'00'
Division Budget Coordinator:	Suzanne Lane	Digitally signed by Suzanne Lane Date: 2023.03.21 17:54:32 -04'00'
Division Director or Delegated Approver:	Chuck Hatcher	Digitally signed by Chuck Hatcher Date: 2023.03.31 11:33:06 -04'00'

The completed and digitally signed form must be returned to Contracts_Adm@FloridaDEP.gov for processing. For questions, call Procurement's main line at 850.245.2361.

Failure to provide all requested information may result in a delay of processing this request. Use additional pages if needed - Appendices must be in Word format.

original Contract

DEP Contract No. RP783,

Res 2017-164

CONTRACT

THIS CONTRACT is entered into between the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** (hereinafter referred to as "Department"), whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 and **St. Johns County Board of County Commissioners c/o St. Johns County Fire and Rescue Department**, whose address is 3657 Gaines Road, St. Augustine Beach, Florida 32084-6565 (hereinafter referred to as "Contractor"), a political subdivision of the State of Florida, to provide lifeguard services for Anastasia State Park.

NOW, THEREFORE, the parties agree as follows:

SERVICES AND PERFORMANCE

1. **SERVICES.** Department does hereby retain, and Contractor agrees to provide lifeguard services ("Services"), through the St. Johns County Marine Rescue within the St. Johns County Fire and Rescue Department, for the area 0.5 miles south of the beach entrance ramp to 3.5 miles north of the beach entrance ramp, in accordance with **Attachment A, Scope of Services** (the "Scope") and all exhibits and Attachments named and incorporated herein by reference. Contractor has been determined to be a vendor to the Department under this Contract.

2. **WORK.**

A. Contractor shall provide the services specified in the Scope ("Work").

B. Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until the Contract, and any necessary Amendments or Change Orders, have been fully executed by both Department and Contractor.

C. There is no minimum amount of Work guaranteed as a result of this Contract. Any and all Work assigned will be at the sole discretion of the Department.

D. Department reserves the right to not authorize any Work and may suspend or terminate for cause any Work assigned to Contractor under this or any other contract, if and in the event, that the Department and Contractor (or any of its affiliates or authorized subcontractors) are adverse in any litigation, administrative proceeding or alternative dispute resolution, until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.

3. **STANDARD OF CARE FOR PERFORMANCE.**

A. Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Department.

B. Contractor shall perform the services in a proper and satisfactory manner as determined by the Department. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor.

C. Contractor shall provide competent, suitably qualified personnel. Contractor must notify the Department's Contract Manager of any changes in the personnel identified in this Contract. Notification shall include a detailed explanation of the need to change personnel and the Contractor's documentation that proposed replacement personnel have equal or greater qualifications and experience.

D. Contractor shall perform the services in a manner consistent with that level of care and skill ordinarily exercised by other contractors performing the same or similar services under similar circumstances at the time performed.

4. TERM OF CONTRACT.

A. Initial Term. This Contract shall begin upon execution by both parties and shall remain in effect for a period of three years, inclusive.

B. Renewal Term. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

This Contract may be renewed, in writing, on the same terms and conditions as the original Contract and any amendments thereto, for a period no greater than the term above, or three (3) years, whichever is longer. All renewals are contingent upon satisfactory performance by Contractor. Renewals may be for the entire period or in increments.

This Contract may not be renewed.

COMPENSATION

5. COMPENSATION.

A. As consideration for the services rendered by the Contractor under the terms of this Contract, the Department shall pay the Contractor on a fixed price basis.

B. The maximum compensation under this Contract shall not exceed **\$120,000.00** for the initial term of the Contract.

C. The initial funding increment under this Contract is **\$39,704.79** for the period of May 26, 2017 (the beginning of Memorial Day weekend) to September 4, 2017 (Labor Day).

D. In no event shall the Contractor continue to perform services once the authorized funding amount has been reached. Contractor shall not commence work on any services the cost of which exceed the balance of the current incremental funding amount until notice is received by the Contractor of an increase in funding. It is the Contractor's responsibility to determine when the authorized incremental funding amount will be reached.

E. Contractor shall not perform, nor be compensated for, any services beyond the services described in the Scope.

6. ANNUAL APPROPRIATION. Department's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Florida Legislature. Authorization for continuation and completion of Work and payment associated therewith may be rescinded with proper notice at the discretion of the Department if state or federal appropriations are reduced or eliminated.

7. PAYMENT METHOD.

A. Contractor shall submit invoices as specified in the Scope. If subcontractors are used, the Contractor shall complete and submit **Attachment C, Subcontractor Utilization Report Form (Subcontractor Report)** with each invoice. Failure to provide Subcontractor Report with an invoice shall result in a delay in processing the invoice for payment.

B. All invoices submitted must be sufficient detail for a proper pre-audit and post-audit review.

C. Department must approve the final deliverable(s) before the Contractor may submit final invoice and any forms.

D. Each invoice, including appropriate supporting documentation as required herein, shall be submitted via email to the following:

Florida Department of Environmental Protection
Anastasia State Park
Attn: Michael D Watkins
Email address: Michael.Watkins@FloridaDEP.gov

E. Contractor shall submit invoices to the Department within thirty (30) days after the date of the Department's written approval of each interim deliverable or the final deliverable specified in the Scope. Contractor's failure to submit invoices within this timeframe may result in **forfeiture** of retainage, if applicable, suspension or termination of remaining work, or the Contractor's **forfeiture** of any unpaid balance for such deliverables.

8. **TRAVEL.** An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- Travel is not authorized under this Contract.
- Travel costs are included in the fixed cost amounts of this Contract.
- Travel costs shall be paid on a cost-reimbursement basis in accordance with the paragraph contained herein of this Contract.

9. **SUBCONTRACTOR PAYMENTS AND RELEASES.** In addition to the invoicing requirements above, the following requirements for payment of invoices for Services shall apply if subcontractors are utilized:

A. Contractor shall pay all subcontractors and vendors under this Contract within seven (7) working days from the date of receipt of payment from the Department, excluding the final payment. If the Contractor receives less than full payment from the Department for the services or goods of the subcontractors or vendors, the Contractor shall pay subcontractors and vendors in at least the same proportion as that paid by the Department. Penalties for non-compliance and provisions for legal assistance for subcontractors are included in Subsection 287.0585(1), F.S.

B. Contractor shall submit, with each invoice for Work where subcontractors or suppliers performed Work during the previous invoice period, lien waivers or other documentation of payment from each subcontractor or supplier for Work done during the previous invoice period.

10. **PROMPT PAYMENT.**

A. Department's Contract Manager shall have five (5) business days, unless a greater period is specified herein, to inspect and approve an invoice. Department shall submit a request for payment to DFS within twenty (20) business days; and DFS shall issue a warrant within ten (10) business days thereafter. Days are calculated from the latter of the date the invoice is received or services received, inspected, and approved. Invoice payment requirements do not start until a proper and correct invoice has been received. Invoices which have to be returned to the Contractor for correction(s) will result in an uncompensated delay in payment. A Vendor Ombudsman has been established within DFS who may be contacted if a Contractor is experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be contacted at (850) 413-5516, per Section 215.422, F.S.

B. If a warrant in payment of an invoice is not issued within forty (40) business days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services, the Department shall pay the Contractor interest at a rate as established by Section 55.03(1), F.S., on the unpaid balance of the invoice. Interest payments of less than \$1 will not be issued unless Contractor requests such payment. The interest rate for each calendar year for which the term of this Contract is in effect can be obtained from DFS' Vendor Ombudsman at the telephone numbers provided above, or the Department's Procurements Section at (850) 245-2361, per Section 215.422, F.S.

11. **PHYSICAL ACCESS AND INSPECTION.** As applicable, the Department personnel shall be given access to and may observe and inspect Work being performed under this Contract, including by any of the following methods:

A. Contractor shall provide access to any location or facility on which the Contractor is performing Work, or storing or staging equipment, materials or documents;

B. Contractor shall permit inspection of any facility, equipment, practices, or operations required in performance of any Work; and,

C. Contractor shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any Work or legal requirements.

PARTY REPRESENTATIVES

12. **NOTICE.** All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.

13. **IDENTIFICATION OF CONTRACT MANAGERS.** All matters shall be directed to the Contract Managers for appropriate action or disposition. Any changes to the Contract Manager information identified below must be noticed, in writing, to the other party within ten (10) calendar days of the change. Either party may provide notice to the other party by email identifying a change of a designated Contract Manager and providing the new contact information for the newly designated Contract Manager. Such notice is sufficient to effectuate this change without requiring a written amendment to the Contract. Department and the Contractor Contract Managers and contact information are provided below:

<u>Contractor</u>	<u>Department</u>
St. Johns County Board of County Commissioners St. Johns County Fire Rescue 3657 Gaines Road St. Augustine, Florida 32084 Attn: Fire Chief Carl Shank Phone Number: (904) 209-1701 Email: cshank@sjcfl.us	Department of Environmental Protection Anastasia State Park 1340A A1A South St. Augustine, Florida 32080-5422 Attn: Michael D Watkins Phone Number: (904) 461-2000 Email: Michael.Watkins@FloridaDEP.gov

14. **CHANGE ORDERS AND AMENDMENTS.** Department may at any time, by written order designated to be a Change Order, make any change in the Work within the general scope of this Contract (e.g., specifications, method or manner of performance, requirements, etc.). All Change Orders are subject to the mutual agreement of both parties as evidenced in writing.

Department reserves the right to amend this Contract, in writing, to be signed by both parties. Amendments shall be based on availability of funding, and receipt and approval by the Department of a budget and scope of work from the Contractor.

Any change which causes an increase or decrease in Contractor's cost or time shall require an appropriate adjustment and modification by Amendment to this Contract. Following execution of this Contract, any future Amendments or Change Orders may be executed by the Department representative with appropriate delegated authority.

CONSEQUENCES FOR FAILURE TO PERFORM

15. **DISPUTE RESOLUTION.** Any dispute concerning performance of the Contract shall be decided as follows:

A. All claims or disputes (Claims) must be presented to the Department in writing within thirty (30) days of the date such Claim arises (Notice of Dispute). The Notice of Dispute shall set out in detail all aspects of the disputed matters to be resolved, including the specific relief sought by the Contractor. Claims not presented by Notice of Dispute to Contract Manager shall be deemed waived by the Contractor.

B. The parties shall make a good faith attempt to resolve Claims which may arise from time to time by informal conference within ten (10) days of the Notice of Dispute.

C. Within ten (10) days of the informal conference, the Department shall provide Contractor a detailed written response to the Claim. A formal conference of the parties shall be convened no later than thirty (30) days following the Department's response to the Notice of Dispute, unless the parties mutually agree in writing to a longer period of time within which to schedule a formal conference.

- 1) All persons necessary to resolution of the claim or disputed matter shall attend the formal conference.
- 2) Minutes of the formal conference shall be taken, recorded, transcribed, and signed by the Department and the Contractor. Any terms of settlement and/or resolution reached shall be signed by all persons authorized to resolve the Claim.

D. Either party may request mediation of unresolved Claims, with the party seeking mediation to bear the expense of mediation.

E. Any Claim not resolved at formal conference or mediation, may be the subject of a complaint filed in a court of competent jurisdiction in Leon County, Florida.

16. FINANCIAL CONSEQUENCES FOR UNSATISFACTORY PERFORMANCE.

A. No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Contractor shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to Department, within thirty (30) days of being notified of the unsatisfactory deliverable.

B. If a satisfactory deliverable is not submitted within the specified time frame, the Department may, in its sole discretion: 1) assess liquidated damages if specified in the Contract or its attachments; 2) request from the Contractor agreement to a reduction in the amount payable; 3) suspend all Work until satisfactory performance is achieved, or 4) terminate the Contract for failure to perform.

17. CORRECTIVE ACTION PLAN. In the event that deliverables are unsatisfactory or are not submitted within the specified timeframe, the Department Contract Manager may, by letter specifying the failure of performance under the Contract, request that a proposed Corrective Action Plan (CAP) be submitted by the Contractor to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.

A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of the Contract for cause as authorized in the Contract.

B. Upon the Department's notice of acceptance of a proposed CAP, the Contractor shall have ten (10) calendar days, or longer if specified in the approved CAP, to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by the Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate the Contract for failure to perform. No actions approved by the Department or steps taken by the Contractor shall estop the Department from subsequently asserting any deficiencies in performance. Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Contract Manager.

C. Failure to respond to a Department request for a CAP shall result in suspension or termination of the Contract.

18. PAYMENT AND PERFORMANCE BONDS. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- No Payment or Performance bonds are required.
- Contractor shall provide executed Payment and Performance Bonds naming the Department as obligee, issued by a surety acceptable to the Department, in the amount(s) of \$ *insert amount*.
- Contractor may be required to provide executed Payment and/or Performance Bonds naming the Department as obligee, issued by a surety acceptable to the Department, in an amount of up to one hundred and twenty percent (120%) of the total anticipated cost of any Work.

19. **Liquidated Damages.** An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- No liquidated damages will be assessed.
- In addition to other remedies elsewhere in this Contract, and as provided by law, unless otherwise stipulated in the Scope, the Contractor hereby covenants and agrees to pay liquidated damages to the Department as follows:
 - A. Contractor acknowledges that time is of the essence for all services provided under this Contract, and whereas the actual damages to be suffered by late performance are incapable of accurate calculation, the parties agree to the following as a reasonable estimation thereof as liquidated damages. In addition to any other provisions of this Contract, in the event that the deliverable identified in the Scope, is not completed and submitted by the close of business on the date the deliverable is due, the compensation amount stated for that portion of the Work may be reduced by five percent (5%) per week for each week the deliverable is late, with the total amount of the liquidated damages not to exceed the total compensation amount of the Scope deliverable.
 - B. The date of submission shall be the date of receipt by the Department.
 - C. If no Department receipt date appears or the date is illegible, the date of submission shall be deemed to be five (5) days prior to receipt by the Contract Manager.
 - D. If completion is or will be justifiably delayed due to reasons as set out in paragraph contained herein, the Department may grant an extension of time as evidenced by a properly executed Amendment.
 - E. If the deliverable(s) fail to comply with the requirements of this Contract, or if questions arise from review and the Contractor is so notified and requested to respond, the Contractor shall furnish the required additions, deletions, or revisions in accordance with the Scope at no additional cost to the Department.
 - F. If the additions, deletions, and revisions are not submitted to the Department's Contract Manager in accordance with the Scope, the compensation stated for that portion of the Work may be reduced by five percent (5%) for each week that the requested deliverable is late, as specified. The total reduction shall not exceed the total amount of the Work.
 - G. Contractor's failure to respond to a request to correct the deliverables will result in termination of the Work and **forfeiture** of any unpaid balance for such deliverables. Additionally, the Department, at its discretion, may re-assign future Work.

LIABILITY

20. **INSURANCE.**

A. To the extent required by law, the Contractor will be self-insured against, or will secure and maintain during the life of this Contract and any renewals, Workers' Compensation Insurance for all of its employees connected with the work of this project. The Contractor shall require any and all subcontractors, if authorized under this Contract, to provide Workers' Compensation Insurance for all employees unless such employees are covered by the protection afforded by Contractor. Such self-insurance program or

insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under the Workers' Compensation statute, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of its employees not otherwise protected.

B. Contractor shall secure and maintain, or provide evidence of self-insurance, and require any subcontractors, if authorized under this Contract, to secure and maintain the following types of insurance in the specified amounts during the life of the Contract and any renewals: An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- Comprehensive general liability coverage with limits of not less than \$_____ per occurrence and \$_____ annual aggregate
- Comprehensive general liability coverage is not required, if self-insured.
- Comprehensive automobile liability coverage with limits of not less than \$_____ per occurrence and \$_____ annual aggregate.
- Comprehensive automobile liability coverage is not required, if self-insured.
- Professional liability coverage with limits of not less than \$_____ per claim and \$_____ per annual aggregate.
- Professional liability coverage is not required, if self-insured.
- Marine Insurance. Longshoremen's and Harbormaster's Insurance and Jones Act insurance in an amount sufficient to cover Contractor's forces.
- Marine Insurance is not required, if self-insured.

C. Contractor shall provide a certificate of insurance that contains a provision that the insurance will not be canceled for any reason on less than thirty (30) days written notice with the exception of non-payment of premium which requires a ten (10) day notice to the Department's Contract Manager and shall reference the Contract Number. In the event that the statutory insurance requirements are changed, coverage limits specified herein will change concurrently. Such insurance shall include the State of Florida, the Department, and the Program Area as the certificate holder for the entire length of the Contract and any renewals.

For additional risks, the State of Florida Board of Trustees of the Internal Improvement Trust Fund shall be added as Additional Insureds for the entire length of the Contract and any renewals. This provision does not apply to governmental entities which are self-insured.

21. INDEMNIFICATION.

The Contractor and the Department shall each be solely responsible for the negligent or wrongful acts of its respective employees and agents acting within the scope of their employment. Further, each party shall bear its own costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by its employees and agents acting within the scope of their employment. However, nothing contained herein shall constitute a waiver by the Contractor or the Department of its sovereign immunity or waiver or modification of Section 768.28, F.S.

THIRD PARTIES

22. **SUBCONTRACTING.** An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- Contractor shall not subcontract any work under this Contract.
- A. Contractor shall not subcontract any work under this Contract without the prior written consent of the Department's Contract Manager. Department reserves the right to reject any

proposed subcontractor based upon the Department's prior experience with subcontractor, subcontractor's reputation, or the Department's lack of adequate assurance of performance by subcontractor. Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.

- B. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Contractor shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under any subcontract. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph contained herein), and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

23. **NONASSIGNABILITY.** Contractor shall not sell, assign or transfer any of its rights, duties or obligations under this Contract (its **Rights and Duties**), without the prior written consent of the Department. Contractor shall remain liable for performance of its Rights and Duties, regardless of any assignment to or assumption by any third party, notwithstanding any approval thereof by the Department. However, the Department may expressly release the Contractor from any and all Rights and Duties through a novation accompanying an approved assignment. Department may assign the Department's Rights and Duties, but shall give prior written notice of its intent to do so to the Contractor. The foregoing notwithstanding, the Contractor hereby assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State.

24. **THIRD PARTY BENEFICIARIES.** This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.

SUSPENSION AND TERMINATION

25. SUSPENSION.

A. Department may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for failure to perform, or as otherwise specified herein, such period of time as the Department may determine to be appropriate for any of the following reasons:

- 1.) Contractor fails to timely and properly correct deficiencies in or performs unsatisfactory work;
- 2.) Contractor's or subcontractor's insurer or surety notifies the Department that any of its required insurance or bonds has lapsed or will lapse, and the Contractor fails to provide replacement insurance or bonds acceptable to the Department before the insurance or bond cancellation or termination date;
- 3.) Contractor or subcontractor materially violates safety laws or other constraints;
- 4.) Department determines that there is a threat to the public health, safety or welfare that necessitates such suspension; or
- 5.) For the convenience of the Department.

B. If the performance of all or any part of the Work is suspended, delayed or interrupted for an unreasonable period of time by an act of the Department in administration of the Work, or by the Department's failure to act within a reasonable time to review or approve an invoice, the Department shall provide an equitable extension of the time allowed to complete the Work and modify the Scope accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption if and to the extent that:

- 1.) Performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or

2.) Equitable adjustment is provided for (or excluded) under any other provision of this Contract.

C. Contractor shall not be compensated for Work performed subsequent to a notice of suspension by Department.

26. TERMINATION.

A. Department may terminate this Contract at any time for cause, in the event of the failure of the Contractor to fulfill any of its obligations. Prior to termination, the Department shall provide ten (10) calendar days written notice of its intent to terminate for cause, including the reasons for such, and shall provide the Contractor an opportunity to consult with the Department regarding the reason(s) for termination. Contractor may be afforded the possibility of curing any default at the sole discretion of the Department.

B. The Department may terminate this Contract without cause and for its convenience by giving thirty (30) calendar days written notice to the Contractor. Termination for convenience shall not entitle either party to any indirect, special or resulting damages, lost profits, costs or penalties, and the Contractor shall be entitled only to recover those amounts earned by it for authorized deliverables completed up to the date of termination (or as may be agreed to in writing by the Department for completion of all or any portion of the Work in process).

GENERAL CONDITIONS

27. ATTORNEY'S FEES. In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs.

28. CONFLICT OF INTEREST. Contractor covenants and warrants that it presently has no interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance of this Contract or the Services required hereunder.

29. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Contract including, but not limited to, local health and safety rules and regulations. This provision shall be included in all subcontracts issued as a result of this Contract.

30. DISQUALIFICATION.

A. The employment of unauthorized aliens by the Contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.

B. Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to State of Florida Executive Order No.: 11-116. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work.

C. If Contract value exceeds one (1) million dollars, Contractor certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Contractor agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Contract. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract for cause if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Contract. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

31. EXECUTION IN COUNTERPARTS. This Contract, and any Change Orders or Amendments thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

32. FORCE MAJEURE. Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees, subcontractors or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, hurricanes, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either 1) within five (5) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or 2) if delay is not reasonably foreseeable, within ten (10) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted by the Contractor against the Department. Contractor shall not be entitled to an increase in the price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to the Department, in which case the Department may 1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department with respect to products subjected to allocation, or 2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or 3) terminate the Contract in whole or in part.

33. FORUM SELECTION, SEVERABILITY, AND CHOICE OF LAW. This Contract has been delivered in the State of Florida and shall be construed in accordance with substantive and procedural laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection with this Contract shall be brought in a court of competent jurisdiction located in Leon County, Florida.

34. GOVERNMENTAL RESTRICTIONS. If the Contractor believes that any governmental restrictions require alteration of the material, quality, workmanship or performance of the products offered under this Contract, the Contractor shall immediately notify the Department so in writing, identifying the specific restriction and alteration. Department reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Department. Contractor's failure to timely notify the Department of its asserted belief shall constitute a waiver of such claim.

35. HEADINGS. The headings contained herein are for convenience only, do not constitute a part of this Contract and shall not be deemed to limit or affect any of the provisions hereof.

36. INTEGRATION. This Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the

original of this Contract, unless otherwise provided herein. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Department. Contractor may not unilaterally modify the terms of this Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Department's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

37. INTERPRETATION OF CONTRACT.

A. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.

B. Contractor acknowledges and agrees that it has independently reviewed this Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) this Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used.

38. MODIFICATIONS REQUIRED BY LAW. Department reserves the right to revise this Contract to include additional language required by Federal agency(ies) or other sources awarding funding to the Department in support of this Contract, if applicable, and to include changes required by Florida Administrative Code rule changes.

39. MYFLORIDAMARKETPLACE TRANSACTION FEE. The State of Florida, through their Department of Management Services, has instituted MyFloridaMarketPlace ("MFMP"), a statewide electronic procurement system. Pursuant to subsection 60A-1.031(3), Florida Administrative Code, the Contract shall be exempt from the MFMP transaction fee.

40. NONDISCRIMINATION.

A. Contractor certifies that no person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.

B. Contractor certifies that neither it nor any affiliate is or has been placed on the discriminatory vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services ("DMS") is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at (850) 487-0915.

C. Contractor shall comply with the Americans with Disabilities Act.

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

42. NON-WAIVER OF RIGHTS. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other party under this Contract, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

43. ORDER OF PRECEDENCE. In the event of a conflict in terms between any of the components of this Contract, the order of precedence for resolving such conflict shall be as follows (1 being the highest precedence):

1. Body of this Contract;
2. Scope;
3. All other attachments to this Contract; and
4. Documents, agreements and exhibits incorporated herein by reference.

44. OWNERSHIP OF DOCUMENTS. All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall be considered works made for hire and shall be and become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, F.S. Contractor shall not copyright any material and products or patent any invention developed under this Contract.

45. P.R.I.D.E. When possible, the Contractor agrees that any articles which are the subject of, or required to carry out, this Contract shall be purchased from P.R.I.D.E. as specified in Chapter 946, F.S., if available, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), F.S.; and for purposes of this Contract the person, firm or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with P.R.I.D.E. are concerned.

The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street, North
St. Petersburg, Florida 33716-1826
Toll Free: 1-800-643-8459
Website: <http://www.pride-enterprises.org/>

46. PUBLIC ENTITY CRIMES. A person or affiliate (as defined) who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount for Category Two (as defined in Section 287.017, F.S.), for a period of 36 months from the date of being placed on the convicted vendor list, pursuant to Section 287.133, F.S. Contractor certifies that neither it nor any affiliate has been placed on such convicted vendor list, and shall notify the Department within five (5) days of its, or any of its affiliate's, placement thereon.

47. Public Records. Public Records Requirements (Attachment B), as attached to this Contract, are hereby incorporated into the Contract.

48. RECORD KEEPING AND AUDIT.

A. Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following Contract completion or termination. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

B. The Contractor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Department's Inspector General in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that its subcontracts issued under this Contract, if any, impose this requirement, in writing, on its subcontractors.

49. REMEDIES. All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Contract. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

50. RESPECT OF FLORIDA. When possible, the Contractor agrees that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Section 413.036(1) and (2), F.S.; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealing with such qualified nonprofit agency is concerned.

The "nonprofit agency" identified is RESPECT of Florida which may be contacted at:

RESPECT of Florida.
2475 Apalachee Parkway, Suite 205
Tallahassee, Florida 32301-4946
(850) 487-1471
Website: www.respectofflorida.org

51. TAX EXEMPTION. Contractor recognizes that the Department is an agency of the State of Florida, which by virtue of its sovereignty is not required to pay any taxes on the services or goods purchased under the terms of this Contract. Department does not pay Federal excise or sales taxes on direct purchases of tangible personal property. Department will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages.

52. WARRANTY OF ABILITY TO PERFORM. Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of this Contract and any renewals.

53. WARRANTY OF AUTHORITY. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to this Contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, the day and year last written below.

ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Title: _____
Date: 5/19/17

By: [Signature]
Secretary or designee
Date: 5/25/17

FEID No. 59-6000825

LEGALLY SUFFICIENT
[Signature]
Name _____
Date: 5-18-17

List of attachments/exhibits included as part of this Contract:

Specify Type / Letter	Description
Attachment A	Scope of Services (3 pages)
Attachment B	Public Records Requirement (1 page)
Attachment C	Subcontractor Utilization Report Form (2 pages) *IF APPLICABLE*

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ATTACHMENT A
SCOPE OF SERVICES
ANASTASIA STATE PARK OCEAN LIFEGUARD SERVICES

1. Scope of Services. The Contractor shall be responsible for providing lifeguard services, through its County Marine Rescue, which is part of the St. Johns County Fire and Rescue Department, for Anastasia State Park for the area 0.5 miles south of the beach entrance ramp to 3.5 miles north of the beach entrance ramp. The Contractor will set up lifeguard stands as shown on the map appearing on the Anastasia State Park Lifeguard Services Map (page 3 of Attachment A), traditionally the primary use area. One stand will be placed just south of the beach entrance ramp. The Contractor lifeguards may need to adjust the placement of the stand based on their experience of the tides and the number of visitors using the area.

The Contractor shall recruit, train, employ, and staff Anastasia State Park with a lifeguard service that is consistent with the standards established by the United States Lifesaving Association and St. Johns County. The Contractor shall equip all lifeguard towers and patrol vehicles with rescue, medical, and communications equipment as specified by the minimum equipment standards promulgated by the United States Lifesaving Association.

From a pool of lifeguards, two (2) lifeguards, one being a Lifeguard III and the other being a Lifeguard II, will be assigned to Anastasia State Park for the operating hours of 10:00 a.m. to 6:00 p.m. local prevailing time. Lifeguard III shall not work more than 10 hours in a workday and Lifeguard II not more than 8 hours in a workday. An individual lifeguard selected to work at Anastasia State Park from the pool of lifeguards shall not be scheduled for more than, nor work more than, forty (40) hours in a workweek. The following schedule shall be followed by the Contractor.

Position	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total
LG III	10	10	10	10	10	10	10	70
LG II	8	8	8	8	8	8	8	56
Totals	18	18	18	18	18	18	18	126

Note: Position titles: LG = Lifeguard

2. Deliverables: Daily Operations:

A. Weekends & Holidays:

- One (1) Lifeguard III: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicle will be on continuous patrol within the visual and/or communication range of beachfront staff.
- One (1) Lifeguard II: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

B. Weekdays (excluding holidays):

- One (1) Lifeguard III: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicle will be on continuous patrol within the visual and/or communication range of beach front staff.
- One (1) Lifeguard II: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

3. **Payment Schedule:**

Performance Period	Payment Amount	Invoice Due Date
May 26, 2017 – June 30, 2017	\$14,359.16	July 7, 2017
July 1, 2017 – September 4, 2017	\$25,345.63	September 30, 2017
Total:	\$39,704.79	

Each invoice shall include documentation by timesheets or other auditable means, of the total number of hours worked by each individual lifeguard for the billing period.

It is hereby understood and agreed by both parties that the Contractor shall not be expected to provide lifeguard services in situations as described in paragraph 32 (**Force Majeure**) of the Contract. The Contractor shall submit a report documenting the dates in which lifeguard services were not provided due to a Force Majeure. In addition to the dates, the reason for the Contractor's inability to provide the services must be documented. Said documentation shall be submitted with each invoice.

Any and all equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor. The above payment schedule includes all personnel and incidental costs associated with the Contractor's performance of the services described herein. No additional compensation shall be provided.

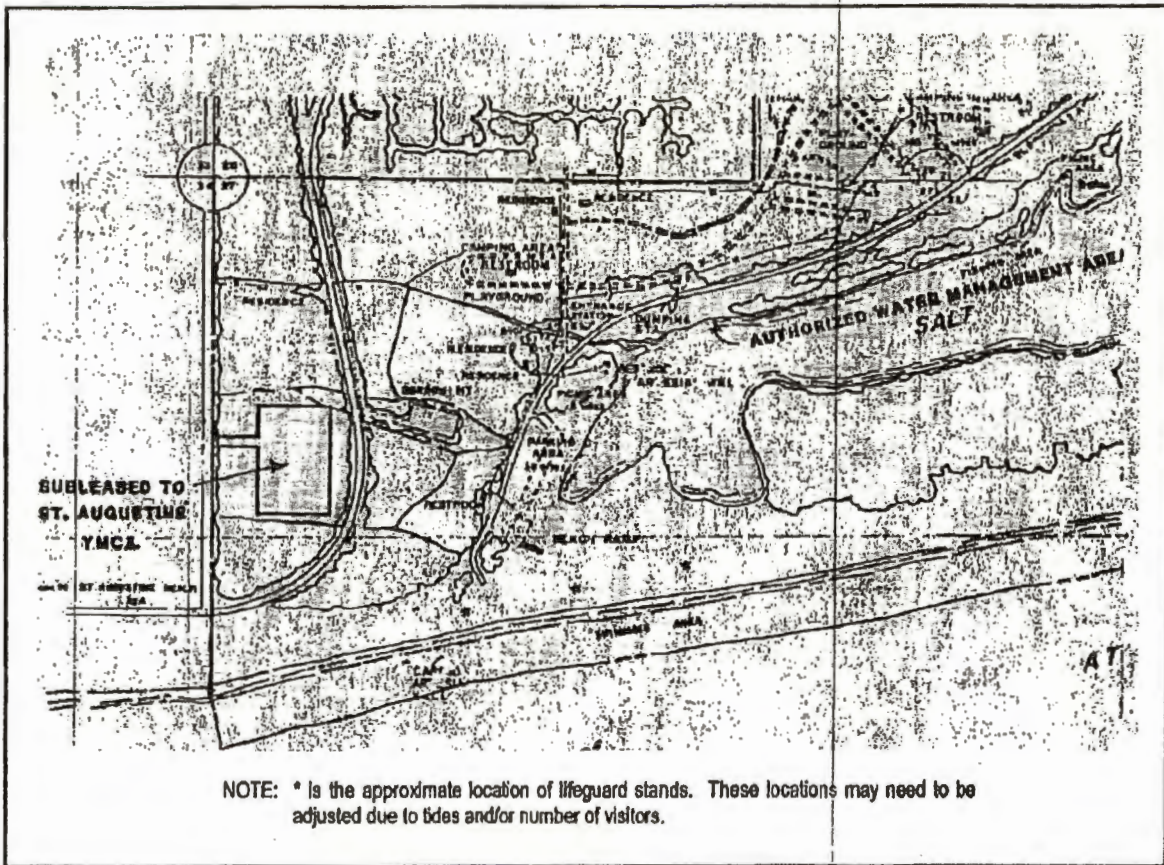
4. **Reports**

- A. Monthly Reports: The Contractor shall provide monthly reports to the Department's Contract Manager, within five (5) days of completion of each calendar month, which summarizes the activities performed during the month. The report shall include information on the number of citizen assists made and the nature of the assistance, the number of emergency actions taken and the nature of the emergency, and the beach closures occurring during the month and the reason for such closures.
- B. Final Report: The Contractor shall submit a final report to the Department's Contract Manager, documenting all lifeguards service and activities performed during the Contract Period. Said documentation shall be submitted with the final invoice specified above.

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ANASTASIA STATE PARK OCEAN LIFEGUARD SERVICES MAP

9



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**ATTACHMENT B
PUBLIC RECORDS REQUIREMENTS**

1. Public Records Access Requirements.

- a. If the Contract exceeds \$35,000.00, and if the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- (1) Keep and maintain Public Records required by the Department to perform the service.
- (2) Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (3) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- (4) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (5) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
- (6) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environment Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**ATTACHMENT C
SUBCONTRACTOR UTILIZATION REPORT FORM**

DIRECTIONS:

Contractors working for the Florida Department of Environmental Protection (DEP) must complete and submit this attachment with each invoice submitted for payment. Questions regarding use of this form should be directed to the Procurement Section (MS93), Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, Phone (850) 245-2361.

DEP Contract No.: _____

Invoice Number: _____

Task Assignment No. (if applicable): _____

Invoice Service Period: _____

INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED

LIST NAMES AND ADDRESSES OF SUBCONTRACTORS UTILIZED THIS INVOICE PERIOD	LIST AMOUNT PAID TO EACH SUBCONTRACTOR THIS INVOICE PERIOD	INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																					
		BUSINESS CLASSIFICATION			CERTIFIED MBE			NON-CERTIFIED MBE			NON-PROFIT ORG.			OTHER NON-PROFIT									
		NON-MINORITY	SMALL BUSINESS (STATE)	SMALL BUSINESS	GOVERNMENTAL AGENCY	NON-PROFIT	P.R.I.D.E.	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	SERVICE-DISABLED	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	SERVICE-DISABLED	BOARD IS 51% OR MORE	51% OR MORE MINORITY	51% OR MORE MINORITY	

SUBCONTRACTOR UTILIZATION REPORT FORM CERTIFICATION:

I certify that the information provided in the preceding page(s) is accurate as of the last day of the payment period identified on this form.

(Signature)

(Date)

(Business Name)

(Street Address)

(City, State, Zip Code)

(Phone Number)

DEP 55-217 (08/00)

RESOLUTION NO. 2017- 164

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF DEP CONTRACT RP783 TO PROVIDE LIFEGUARDS TO ANASTASIA RECREATION AREA.

WHEREAS, the Board of County Commissioners of St. Johns County ("the Board") entered into DEP Contract No. RP783 ("the County") with the State of Florida Department of Environmental Protection (the "State") to provide lifeguards from the County to provide water surveillance and emergency response to Anastasia State Recreation Area for peak summer season between Memorial Day weekend and Labor Day weekend; and

WHEREAS, the Contract provides for funding in the amount of \$39,704.79 to cover the period of service from May 26, 2017 to September 4, 2017.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

1. The above recitals are hereby incorporated herein by reference and adopted as finding of fact in support of this Resolution.
2. The County Administrator of St. Johns County is hereby authorized to execute DEP Contract No. RP783 (attached) to provide funding for lifeguard services.
3. To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this resolution, this resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 16th day of May, 2017.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHN COUNTY, FLORIDA

By: _____

James K. Johns, Chair

ATTEST: Hunter S. Conrad, Clerk

By: *Sam Halterma*
Deputy Clerk

RENDITION DATE 5/19/17



DEP BUDGET-COST ANALYSIS FORM

PROJECT TITLE: FY 23 (May 26 - June 30) Lifeguard Services - Anastasia State Park

BUDGET DETAIL					COST ANALYSIS			
Budget items below to be provided by the Contractor. See attached instructions.					Cost Analysis to be completed by the Department Contract Manager. See attached instructions.			
					Allowable	Reasonable	Necessary	COMMENTS (Basis for Decision)
1. PERSONNEL EXPENSES								
A. Salaries - (Name/Title/Position)								
	Hourly Cost (\$)	Hours	Totals (\$)					
<u>Lifeguard III</u>	20.46 *	360	= 7365.6					
<u>Lifeguard II</u>	18.15 *	288	= 5227.2					
	*		= 0					
	*		= 0					
	*		= 0					
	*		= 0					
		Total Salaries	<u>12592.8</u>					
B. Fringe Benefits (Rate% * Total salaries applicable)	Rate %	Total Sal. App.	Total \$					
	0.00% *	0	0					
		Total Personnel Expenses (A+B)						
2. Supplies								
Description								
	Unit Cost \$	Quantity	Totals \$					
<u>Complete Basic Life Support kit including oxygen and Automatic External Defibrillator</u>	1000 *	1	= 1000					
<u>Uniforms</u>	200 *	2	= 400					
		Total Supplies	<u>1400</u>					Response supplemented by responding EMT/Paramedic Staff
3. Equipment								
Description								
	Unit Cost \$	Quantity	Totals \$					
<u>4x4 Rescue Vehicle equipped with Rescue Board</u>	3,300 *	1	= 3300					
<u>Flotation Cans, Binoculars, Radio, Misc Rescue Equipment.</u>	*		= 0					
			= 0					
		Total Equipment	<u>3300</u>					Response Supplemented by Personal Water Craft, Rescue Boat(s)
4. Travel								
Purpose/Destination								
	Days	Per Diem \$	Fare/Rate \$	Mileage	Totals \$			
	[] *	[]	[] *	[]	=			0
	[] *	[]	[] *	[]	=			0
	[] *	[]	[] *	[]	=			0
			Total Travel		<u>0</u>			

				Allowable	Reasonable	Necessary	COMMENTS (Basis for Decision)
5. Contractual							
Name or Services	Fee/Rate \$	Hours	Totals \$				
_____	* _____	_____	= _____				
_____	* _____	_____	= _____				
_____	* _____	_____	= _____				
	Total Contractual		0				
6. Miscellaneous							
Description	Unit Cost \$	Quantity	Totals \$				
Fuel	500	* 1	= 500				Administration Expense - Hiring, Drug Screen, Scheduling, Printing, Phone Contact, Training, Record Keeping, Administrative Supervision
Administration Expense	600	* 1	= 600				
_____	* _____	_____	= _____				
_____	* _____	_____	= _____				
_____	* _____	_____	= _____				
	Total Miscellaneous		1100				
SUBTOTAL (1 thru 6)			18392.8				
7. Overhead/Indirect - Base: _____							
	Rate %	Base \$	Total \$				
	0.00%	* 0	= 0				
8. Total Budget							
			\$ 18392.8				

CERTIFICATION

I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is attached evidencing the methodology used and the conclusions reached.

Name: _____

Signature: _____

Date: _____

DEP BUDGET-COST ANALYSIS FORM

PROJECT TITLE: FY 23 (July 1 - September 4) Lifeguard Services - Anastasia State Park

BUDGET DETAIL					COST ANALYSIS					
Budget items below to be provided by the Contractor . See attached instructions.					Cost Analysis to be completed by the Department Contract Manager. See attached instructions.					
					Allowable			Reasonable	Necessary	COMMENTS (Basis for Decision)
1. PERSONNEL EXPENSES										
A. Salaries - (Name/Title/Position)					Hourly Cost (\$)	Hours	Totals (\$)			
	<u>Lifeguard III</u>				20.46 *	660	= 13503.6			
	<u>Lifeguard II</u>				18.15 *	528	= 9583.2			
					*		= 0			
					*		= 0			
					*		= 0			
					*		= 0			
					*		= 0			
					*		= 0			
					*		= 0			
	Total Salaries						23086.8			
B. Fringe Benefits (Rate% * Total salaries applicable)					Rate %	Total Sal. App.	Total \$			
					0.00% *	0	0			
	Total Personnel Expenses (A+B)						0			
2. Supplies										
	Description				Unit Cost \$	Quantity	Totals \$			
	<u>Complete Basic Life Support kit including oxygen and Automatic External Defibrillator</u>				2000 *	1	= 2000			
	<u>Uniforms</u>				0 *	2	= 0			
					*		= 0			
	Total Supplies						2000			Response supplemented by responding EMT/Paramedic Staff
3. Equipment										
	Description				Unit Cost \$	Quantity	Totals \$			
	<u>4x4 Rescue Vehicle equipped with Rescue Board</u>				6700 *	1	= 6700			
	<u>Flotation Cans, Binoculars, Radio, Misc Rescue Equipment</u>				*		= 0			
					*		= 0			
	Total Equipment						6700			Response Supplemented by Personal Water Craft, Rescue Boat(s)
4. Travel										
	Purpose/Destination	Days	Per Diem \$	Fare/Rate \$	Mileage	Totals \$				
		[] =	[] +	[] *	[] *	= 0				
		[] =	[] +	[] *	[] *	= 0				
		[] =	[] +	[] *	[] *	= 0				
					Total Travel	0				

				Allowable	Reasonable	Necessary	COMMENTS (Basis for Decision)
5. Contractual							
Name or Services	Fee/Rate \$	Hours	Totals \$				
_____	*	_____	= _____				
_____	*	_____	= _____				
_____	*	_____	= _____				
Total Contractual			0				
6. Miscellaneous							
Description	Unit Cost \$	Quantity	Totals \$				
Fuel	1000	* 1	= 1000				Administration Expense - Hiring, Drug Screen, Scheduling, Printing, Phone Contact, Training, Record Keeping, Administrative Supervision
Administration Expense	1200	* 1	= 1200				
_____	*	_____	= _____				
_____	*	_____	= _____				
_____	*	_____	= _____				
Total Miscellaneous			2200				
SUBTOTAL (1 thru 6)			33986.8				
7. Overhead/Indirect - Base: _____							
	Rate %	Base \$	Total \$				
	0.00%	* 0	= 0				
8. Total Budget			\$ 33986.8				

CERTIFICATION

I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is attached evidencing the methodology used and the conclusions reached.

Name: _____

Signature: _____

Date: _____

BUDGET INSTRUCTIONS

A detailed budget is required for DEP fixed price contracts; however, this form shall also be used for determining the maximum amount needed under cost-reimbursement and fee-schedule contracts and to complete the required cost analysis for non-competitively awarded contracts over the Category II threshold. For fixed price contracts, this budget form is intended to provide the minimum information needed for budget approval. The DEP reserves the right to require additional information when necessary for approval of the fixed price, and also to require that any part of the project be compensated on a cost-reimbursement basis. Attach a separate sheet to provide an explanation of travel, equipment (especially computers), subcontracts, and other supporting information, and when needed for extra space (use same format and show totals on this form). This form should list the total fixed price to be funded by DEP, or the total project budget when the DEP is to pay a percentage of the project total. Breakdowns by task or phase, or other division of work, should be shown on the separate attachment. The use of this particular form is not a requirement for the budget, however any other budget form or format used should provide, at a minimum, the same information and level of detail. This form is required for completion of the cost analysis.

- 1 PERSONNEL - A. Salaries - Identify the persons to be compensated for work on this project by name (if known), position, and title. Show the hourly cost and total hours to be charged for each person or position. If more space is needed, use a separate sheet to list individual positions and salaries, and show here the total hours for each title or position. Divide annual salaries by 2080 hours, and nine month academic salaries by 1560 hours, to find the hourly rate. B. Fringe Benefits - Multiply the rate by the total salaries to which fringe benefits apply. If the rate is variable, explain and show calculations on an attachment.
- 2 SUPPLIES - List expendable supplies by category description, unit costs and quantity.
- 3 EQUIPMENT - List non-expendable personal property/equipment valued at \$1,000 or more by description, unit cost, and quantity. Computers and data-processing equipment should be described in detail in an attached explanation.
- 4 TRAVEL - List trips by their purpose and/or destination. Unless travel details are included in the Scope of Services, a separate narrative should be attached. Indicate the number of days for each trip and the per diem. **Keep in mind the DEP can only pay for travel at the approved State rate (Section 112.061, Florida Statutes).** Use "Fare/Rate" for mileage rate and multiply by "Mileage", or for travel fare and leave "Mileage" blank.
- 5 CONTRACTUAL - Subcontractors should provide the same information required by this budget form, with the following exceptions: (a) when professional services are provided at a pre-existing approved rate or fee shown on the budget; or (b) the subcontract is to be obtained competitively. For either (a) or (b), show an estimated maximum amount and provide an attached explanation as to how it was determined. Contractual services other than fixed price will be compensated by the DEP on a cost-reimbursement basis.
- 6 MISCELLANEOUS - List expenses not included in any of the above categories. Examples would be printing, copying, postage, communications, etc. Non-expendable equipment valued at less than \$1,000 may be listed also. Include only expenses directly related to the project, not expenses of a general nature.
- 7 OVERHEAD/INDIRECT - Indicate the approved overhead/indirect cost rate, the dollar amount of the base to which it is applied, and the resulting total. Identify the base (cost categories) to which the rate is applied on the line indicated.
- 8 TOTAL BUDGET - Show the total of categories 1 through 7.

COST ANALYSIS INSTRUCTIONS

A cost analysis must be completed for any non-competitively procured agreement in excess of Category II, as well as any amendments that affect the amount of compensation and/or the level of services provided.

- 1 Each separate line item must be evaluated to determine whether the cost is allowable, reasonable and necessary. Each miscellaneous cost must be specifically identified.
- 2 To be allocated to a program, a cost must be related to the services provided. If the cost benefits more than one program, a determination must be made that the cost is distributed in a reasonable and consistent manner across all benefiting programs.
- 3 To be allowable, a cost must be allowable pursuant to state and federal expenditure laws, rules and regulations and authorized by the agreement between the state and the contractor/grantee.
- 4 To be reasonable, a cost must be evaluated to determine that the amount does not exceed what a prudent person would incur given the specific circumstances.
- 5 To be necessary, a cost must be essential to the successful completion of the project.
- 6 Indirect costs/overhead should be evaluated to determine that the rate is reasonable.
- 7 Once the analysis of each budget item has been completed, indicate (by Yes or No) in the boxes to the right if the cost is allowable, reasonable and necessary. Use the comment box to provide comments on the basis for your decision.
- 8 Documentation must be maintained in the Contract/Grant Manager's files to support the conclusions reached as shown on this form.
- 9 For contracts/grants prepared by the Procurement Section, this completed, signed form must be submitted with the Contract Initiation Form. For those grant agreements prepared from approved templates, this completed, signed form must be maintained in the grant file in the Program Area.