



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING DIVISION

REQUEST FOR PROPOSAL

RFP NO. 2023-069

BEACH EQUIPMENT RENTAL CONCESSION SERVICES

DUE DATE AND TIME: November 8, 2023 @ 2:00 P.M. (LOCAL TIME)

INSTRUCTIONS

Proposals must be received on or before the due date and time (local time). All Proposals will be publicly opened at City Hall, unless otherwise specified.

The City will only accept electronic submittals for this Request for Proposals (RFP). Proposals will be accepted through a secure mailbox at Periscope Supplier-to-Government (S2G) (formerly known as BidSync) (www.PeriscopeS2G.com or www.bidsync.com) until the Due Date and Time indicated in this RFP. Periscope S2G does not accept electronic Proposals after the Due Date and Time. It is the sole responsibility of the Proposer to ensure its electronic RFP submission is complete prior to the solicitation Due Date and Time. Electronic submission of Proposals will require the uploading of forms and/or attachments as designated in this RFP. Electronic submission must include a signed original of the Solicitation Summary form. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited.

If the Solicitation Summary form is not included, the City may deem the Proposal non-responsive. Proposals must contain all information required to be included in the submittal, as described in this Solicitation.

BROADCAST

The City of Delray Beach utilizes electronic online services for notification and distribution of its solicitation documents. The City's solicitation information can be obtained from: (a) Periscope S2G - www.PeriscopeS2G.com (b) Purchasing webpage on the City of Delray Beach <https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations>; and (c) Request via email burzynskij@mydelraybeach.com.

Proposers who obtain solicitations from sources other than those named above are cautioned that the Request for Proposals package may be incomplete. The City will not evaluate incomplete Proposal packages. Periscope S2G is an independent entity and is not an agent or representative of the City.

CONTACT

Any questions regarding the specifications and Solicitation process must be submitted in writing through the “Question and Answer” feature on www.PeriscopeS2G.com. Requests for clarification and additional information must be received prior to the deadline for Submission of Questions on October 27, 2023, at 5:00 P.M. (LOCAL TIME).



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444
LEGAL ADVERTISEMENT

REQUEST FOR PROPOSAL NO. 2023-069
Beach Equipment Rental Concessions Services

The City of Delray Beach, Florida (“City”) is seeking proposals from qualified firms or individuals (“Proposer”) who can provide Beach Equipment Rental Concession Services, in accordance with the terms, conditions, and specifications contained in this Request for Proposals.

Request for Proposals documents are available beginning **September 29, 2023** on the Purchasing Division’s webpage of the City of Delray Beach website at <https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations>, Periscope S2G at www.PeriscopeS2G.com, by contacting the City Purchasing Division at burzynskij@mydelraybeach.com or by phone at 561- 243-7153.

Proposals will be accepted through a secure mailbox at Periscope S2G until the Deadline for Submission as indicated in this RFP. **The Due Date and Time for submission of proposals is November 8, 2023, at 2:00 PM (LOCAL TIME).** Late Proposals will not be accepted. **The City will only accept electronic Proposals for this RFP.**

The City will not hold a Pre-Proposal Conference.

It is the responsibility of the Proposer to ensure that all pages are included in the submission. All Proposers are advised to closely examine the solicitation package. Any questions regarding the completeness or substance of the solicitation package or scope of services must be submitted in writing via email to burzynskij@mydelraybeach.com.

The City of Delray Beach is exempt from Federal and State taxes for tangible personal property tax.

The City of Delray Beach reserves the right to accept or reject any or all Proposals, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such terms as it deems will best serve the interests of the City.

CITY OF DELRAY BEACH

**SECTION 1
PROJECT OVERVIEW**

1.2 The City of Delray Beach, Florida, is soliciting Proposals from qualified Proposers for Beach Equipment Rental Concession Services in accordance with the terms, conditions, and specifications contained in this Request for Proposals (RFP).

1.2 **TERM OF CONTRACT**

The contract shall commence upon the date of the duly executed Agreement and shall remain in effect for a term of five (5) years.

1.3 **METHOD OF AWARD:**

The Method of Award for this solicitation will be to the Proposer with the highest ranking or scores, whom the City is able to negotiate an acceptable Agreement. The City will enter negotiations with the firm receiving the highest-ranking proposal score. Should negotiations fail then the City will enter negotiations with the next highest-ranking firm.

Proposers are informed that the aggregate five (5) year total for the Minimum Annual Guarantee will be used to calculate points to rank each proposal.

1.5 The City intends to contract a single firm for the services listed in this procurement.

1.6 The anticipated schedule for this solicitation is as follows:

ITEM	EVENT	DATE/TIME
a.	Issue RFP	September 29, 2023
b.	Institute Cone of Silence	September 29, 2023
c.	Non-Mandatory/Non-Mandatory Pre-Proposal Conference	N/A
d.	Deadline for Delivery of Questions	October 27, 2023 @ 5:00 PM
e.	Due Date and Time (for delivery of Proposals)	November 8, 2023, @ 2:00 PM
f.	Technical Evaluations	TBD
g.	Oral Presentations/Interviews (if conducted)	TBD
h.	Final Evaluations	TBD

1.7 **MEETING LOCATIONS**

- City Hall Conference Room - located at 100 N.W. 1st Avenue, first floor, Delray Beach, FL.
- Swinton Operations Center (SOC) - Conference Room and Training Rooms - located at 434 South Swinton Avenue, Delray Beach, FL.

END OF SECTION 1

SECTION 2 SPECIAL TERMS AND CONDITIONS

2.1 PURPOSE

The purpose of this Request for Proposals (RFP) is to solicit Proposals from qualified firm(s) or individuals who can provide Beach Equipment Rental Concession Services.

The City expects each Proposer to clearly outline its best and most comprehensive resources in its response, because all services and responsibilities identified in this solicitation will be awarded to the selected Proposer.

2.2 ELIGIBILITY

To be eligible to respond to this Request for Proposals and be considered for award, the Proposer must demonstrate to the satisfaction of the City that it or the principals assigned to the project has successfully provided services, similar in scope and complexity, to a municipality, quasi-governmental organization, or a private organization.

2.3 RECORDS, ACCOUNTS, AND STATEMENTS

The successful Proposer shall keep on its premises, or such other place approved by the City, current, true, accurate, and complete records and accounts of all services provided to the City and shall give the City or City's representative access during reasonable business hours and upon three (3) business days' notice to examine and audit such records and accounts. Such records shall be maintained at such standards to allow a certified auditor the ability to properly examine the records in order to certify a statement of the successful Proposer's business with the City.

2.4 GENERAL STANDARDS

The successful Proposer shall at all times comply with all rules, regulations, and ordinances of the City and other governmental agencies having jurisdiction. The successful Proposer shall further take all precautions and extreme care to conduct its activities in a safe, professional, and prudent manner with respect to its agents, employees, members, visitors, and participants.

- a. Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for any material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b. Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors, is or has been involved within the last three (3) years.

2.5 DEFAULT

- a. In the event the successful Proposer defaults in the performance of the contract, the City shall have the following options:
 - i. The City Manager will give the successful Proposer thirty (30) days' written notice of default. If the problem is not resolved within the thirty (30) days, the City may immediately terminate the contract upon providing written notice of the Proposer's failure to timely cure the default and obtain the services elsewhere.
 - ii. The City may recover at law any and all claims that may be due to the City from the successful Proposer.

- iii. The City may perform such work as it deems necessary to cure the default or subsequent default and charge the successful Proposer for the full cost of labor and materials expended, plus thirty percent (30%) of the cost for administrative overhead.
- b. The acceptance of all or part of monies due for any period after a default shall not be deemed as a waiver of any of these options, or a waiver of the default or subsequent default of the same or any other term, covenant, and condition.
- c. The successful Proposer agrees that the City shall not be responsible or have any liability whatsoever for any alleged damages, claim of lost profits, or otherwise in the event the City declares the successful Proposer in default hereunder.

2.6 INSURANCE

The selected Proposer shall not commence any performance pursuant to the terms of this RFP until certification or proof of insurance has been received and approved by the City's Risk Coordinator or designee.

The required insurance coverage is to be issued by an insurance company authorized, licensed, and registered to do business in the State of Florida, with the minimum rating of A- VII or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least ten (10) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the selected Proposer's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

The selected Proposer must submit a current Certificate of Insurance, naming the City of Delray Beach as an additional insured and listed as such on the insurance certificate. New certificates of insurance are to be provided to the City upon expiration. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Division located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

The selected Proposer shall provide insurance coverage as follows:

- 2.6.1. **WORKERS COMPENSATION** – With statutory limits, the City reserves the right not to accept exemptions to the Workers Compensation requirements of this Solicitation.
- 2.6.2. **EMPLOYER'S LIABILITY** – With a limit of not less than One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) for each occurrence, and Five Hundred Thousand Dollars (\$500,000) in the aggregate.
- 2.6.3. **COMPREHENSIVE GENERAL LIABILITY** – With limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

NOTE – If Comprehensive General Liability limits are less than One Million Dollars (\$1,000,000), the sum of Comprehensive General Liability limits and Excess Liability limits must equal no less than One Million Dollars (\$1,000,000).

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.

- 2.6.4. **AUTOMOBILE LIABILITY** – Covering all vehicles associated with Proposer's 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 One Million Dollars (\$1,000,000) combined single limit per each occurrence.
- 2.6.5. **PROFESSIONAL LIABILITY** – With limits of not less than One Million Dollars (\$1,000,000) per occurrence.
The selected Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.
- 2.6.6. **PRODUCTS/COMPLETED PRODUCTS OPERATIONS**– products/Completed products operations with limits of not less than Two Million Dollars (\$2,000,000) annual aggregate.
- 2.6.7. **COMMERCIAL CRIME**- Commercial Crime Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.

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 A- VII 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 Purchasing Division located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

2.7 PERFORMANCE BOND/LETTER OF CREDIT

- 2.7.1. Bid security made payable to the City of Delray Beach in an amount of **five percent (5%)** of the Proposer's maximum Bid price and in the form of a certified check or cashiers check drawn upon any State or National Bank of Florida or a Bid Bond issued by a surety. Said check or bond shall be made payable to the CITY and shall be given as a guarantee that Proposer, upon receipt of notification of tentative award of the contract, will enter into an Agreement with the CITY, and furnish the necessary documents including but not limited to: insurance certificates, Payment Bond and Performance Bond; each of the said bonds to be in the amount stated herein, all bonds shall be written by a surety authorized to conduct business in the State of Florida and shall have a registered agent in the State of Florida. Bid Bonds issued on any form, other than those provided herein, will not be acceptable. No bids will be considered unless accompanied by the required bid security.
- 2.7.2. The Bid Security of the Successful Proposer will be retained until such Proposer has executed the Agreement and furnished the required contract security whereupon the Bid security will be returned. If the apparent successful Proposer fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Intent to Award, the CITY may annul the Notice of Intent to Award and the Bid security of that Proposer will be forfeited. The CITY may then accept the bid of the next most qualified responsible responsive Proposer or re-advertise for bids. If the bid of the next most qualified responsible responsive Proposer is accepted, this acceptance shall bind such Proposer as though he was the original successful Proposer. There shall be no binding contract until such time as the CITY accepts the contract and makes final award of the contract. The Bid Security of other Proposers whom CITY believes to have a reasonable chance of receiving the award may be retained by the CITY until

the earlier of the seventh day after the effective date of the Agreement or the ninety-first day after the Bid opening, whereupon Bid security furnished by such Proposers will be returned. Bid security with Bids which are not responsive will be returned within ten (10) days after the Bid opening.

2.8 CERTIFICATIONS/LICENSES

Any Proposer which submits an offer in response to this solicitation shall, at the time of such offer, hold all the required licenses, permits, and certifications issued by the applicable State, County or City agency/department qualifying the Proposer to perform the services described in this solicitation.

The City may at its option, and in its best interest, allow the Proposer to supply any missing information on certification and licensing during the Proposal Evaluation period.

Refer to Section 3 – 3.12 for licensed requirements.

2.9 SUBCONTRACTING IS NOT ALLOWED

The City will not allow any subcontracting of the work to be performed under this Contract. The selected Proposer must perform the work with its own staff. During the performance of the Contract, the City may occasionally allow the selected Proposer to substitute some of its staff to account for unavailable individuals, but only with the explicit written permission of the City.

2.10 OTHER FORMS OR DOCUMENTS

If the City is required by the selected Proposer to complete and execute any other forms or documents in relation to this solicitation, the terms, conditions, and requirements in this solicitation shall take precedence to any and all conflicting or modifying terms, conditions or requirements of the selected Proposer's forms or documents.

2.11 MODIFICATION OF SERVICES

- a. The City reserves the right to delete or modify any portion of the contracted services at any time without cause, and if such right is exercised by the City, the rates and fees shall be reduced at the same ratio as the estimated costs of the services deleted relates to the estimated costs of the service originally contracted. If service has already been provided on the portion of the work to be deleted, the selected Proposer will be paid for the deleted portion based on the estimated percentage of the completion of such portion.
- b. If the selected Proposer and the City agree on modifications or revisions to the service elements, after the City has approved performance of a particular task or project, and a budget has been established for that task or project, the selected Proposer shall submit a revised budget to the City for approval prior to proceeding with the task or project.

2.12 MINIMUM FEES

The City intends to award a single contract for the Beach Equipment Rental Concessions

Minimum Annual Guarantee (MAG) annual fee payable to the City:

Year 1	\$431,813
Year 2	\$431,813
Year 3	\$453,404
Year 4	\$453,404
Year 5	\$453,404

The above is the MAG fees for years one (1) through five (5). The MAG fee is based on total

number of days of sunshine in Delray Beach (average 235 days/yr) X 70% rental time X 350 (available set-up) X \$7.50 per set-up. Proposer may propose higher MAG fees as part of the response to the proposal section of the RFP.

END OF SECTION 2

SECTION 3 SCOPE OF SERVICES

3.1 GENERAL INFORMATION AND BACKGROUND

The City of Delray Beach (City) is requesting sealed proposals from qualified vendor(s) to provide Beach Equipment Rental Concessions Services for the City. The scope of services consists of furnishing all labor, supplies, equipment, tools, services, and supervision necessary to perform and maintain a first class, neat, safe, sanitary, and professional operation and in accordance with and subject to the terms and conditions of the final contract and all Applicable Laws. The Proposer shall create an atmosphere suitable for families with young children. Proposer shall ensure at all times that services provided are of high quality when compared to similar operations both locally and nationally.

For any request for additional set-ups, the request must be submitted in writing to the Director of Parks and Recreation.

3.2 BASIC SERVICES

The following is a list of the basic services the City requires the selected Proposer to provide.

1. Beach equipment rental concession
2. Equipment set-up and location
3. Maintenance of equipment and concession areas

3.3 BEACH EQUIPMENT

1. At no time will more than three hundred fifty (350) set-ups (as defined below) be permitted on the beach. This includes no more than 300 on the main beach and 50 at Atlantic Dunes Park. Additional set-ups during peak holiday's may be allowed and should be included in the proposal with the desired quantity of set-ups, location, date(s), and additional fee to be paid to the City.

2. The maximum allowable amount of equipment may be lowered by the City of Delray Beach as needed due to beach erosion, diminished beach size, special events, or other circumstances. The City shall have the right to increase or decrease the number of locations at the discretion of the City Manager.

3. All beach chairs, cabanas, umbrellas, cushions, etc. will be uniform in material, and colors and style must be approved by the City. All equipment must be of very high quality in both form, function, and appearance. Equipment must be in new or like-new condition at all times. Any proposed modifications to the amenities provided herein shall be subject to the prior written approval by the City (this includes any personalization, logos, or other special wording/markings or signage). Setups shall be defined as:

- a. One (1) umbrella with two (2) chairs or two (2) recliners with cushions and one (1) table; or
- b. One (1) cabana with two (2) chairs or two (2) recliners with cushions and one (1) table

4. The Proposer shall not be authorized to rent any equipment or products which are not scheduled in their proposal.

5. The City reserves the right to perform random inspections of the equipment to determine quality, safety, and compliance with contract. Violations of the contract will result in monetary penalties as follows:
 - a. Warning: The Proposer will receive a warning of a potential violation (first time only) and be allowed 48 hours to rectify the violation.
 - b. First violation: \$1,000
 - c. Second violation: \$2,500
 - d. Third violation: \$5,000
 - e. Fourth violation: Potential contract termination

3.4 EQUIPMENT SET-UP AND LOCATION

1. Upon execution of this contract, the Proposer acknowledges that all of the beaches are public and concession operations must not restrict, or appear to restrict, access to the general public, or in any way limit the public nature or ambiance of the beachfront. The Proposer will conduct its operations so as to maintain a reasonably quiet and tranquil environment and make no public disturbances. The Proposer will not in any way limit or restrict the public from using any portion of the public beach. All of Delray Municipal Beach will remain available for public use whether or not the public elects to patronize or rent Proposer equipment.

2. Upon execution of this contract, the Proposer will submit a written plan indicating the location of all equipment. Equipment includes any item placed on the beach by the Proposer. This plan will be submitted to the City which shall have the right to approve or disapprove the location of equipment. The Proposer may not alter the set-up location of equipment without prior consent from an authorized City designee.

The Proposer agrees that it may be necessary for the City to alter set-up plans in the interest of public safety and to ensure a clear line of sight for patron surveillance. The Proposer and all employees of the Proposer will respond promptly and effectively carry out any such directions.

3. Equipment set up and location plans must conform to the following conditions:
 - a. Equipment and service is restricted by the boundaries of the municipal beaches and recreation areas. No equipment will be set up or stored off site of the public beach. Equipment will not be set up within the designated recreation areas. Equipment set ups may be pre-arranged by the Proposer each day **no more** than one hour in advance of normal business hours.
 - b. Equipment must be arranged in one or two rows **ONLY**. No more than two (2) rows of any equipment may be placed on any section of the beach. For the purpose of this contract, a row is defined as two or more set-ups of equipment arranged next to each other in a straight line. Equipment is defined as any items described in the proposal which the Proposer places on the beach.
 - c. No equipment will be placed where it obstructs or enters the line of sight when viewing the Atlantic Ocean from the Ocean Rescue lifeguard towers.

4. No equipment will be placed in front of beach access pathways. The City shall have the right to approve or disapprove all locations and limit the number of advanced equipment set-ups.

in designated locations. The City shall have the right to require the Proposer to relocate any equipment upon demand of the City Manager or his designated representative, if the City

determines that a hazardous or unsightly condition exists in an area where such equipment is located or where the City is undertaking a special event.

5. At a minimum, equipment plans may include 3 areas as noted below:
 - a. From northern recreation area (lifeguard stand N2) to the southern recreation area (between S4 and S5, not to intrude in the recreation/volleyball court area). When special events occur within recreation areas, cabana services may be permitted upon request.
 - b. At no time may set-ups be allowed in front of the lifeguard towers or limit the visibility of the lifeguards. This should be included in the equipment plans that are submitted.
6. Removal and placement of equipment on the beach shall be conducted during daylight hours and shall not occur in any location prior to completion of marine turtle surveys or any protective measures mandated by the city, state or county. All equipment will be stored and secured with proper locking devices at the toe of the dune before 8:00 P.M. or sunset, whichever is earlier, every day.
7. The Proposer will ensure the placement and storage of all equipment is compliant with environmental standards, codes, ordinances and laws of the City of Delray Beach, Palm Beach County, and the State of Florida. This includes compliance with Article 14A of Palm Beach County's Unified Land Development Code. According to Article 14A, from March 1st through October 31st "Beach obstructions shall be removed from the beach or placed in a single row as close to the toe of the dune as possible in an area that does not impact native vegetation or significantly affect sea turtles." The Proposer will comply with Article 14A by removing all equipment from the beach or placing all equipment in a single row as close to the dunes as possible before darkness or 8 P.M. every day during turtle nesting season or from March 1st until October 31st. The Proposer will not set up prior to receiving approval from turtle monitors during turtle nesting season.
8. The Proposer shall not locate any equipment within 10' of a marked sea turtle nest.

3.5 BEACH WHEELCHAIRS

When requested by the public or by city staff, the Proposer will provide beach wheelchairs to patrons in need of this service. The beach wheelchairs are purchased and owned by the City of Delray Beach but will be provided to the public by the Proposer. The Proposer will not charge the public any fee for the provision of these chairs. The beach wheelchairs will be stored in the areas provided by the Proposer. The Proposer is not responsible for transporting patrons to, from, or in the beach wheelchairs.

3.6 MAINTENANCE OF EQUIPMENT AND CONCESSION AREA

1. The Proposer will keep all equipment in good repair so that it is aesthetic in appearance and in safe usable condition so as not to present any potential hazard to any beach patron. Equipment will be maintained in a manner that will ensure continuous, satisfying service to the public. Damaged equipment will be repaired or promptly removed from the beach until it is restored to usable condition. Damaged equipment must be repaired or removed from the beach by the following day it was discovered or reported damaged. The Proposer will be responsible for any costs incurred with the disposal or removal of equipment.

2. When the Proposer seeks to utilize a motorized vehicle for the purpose of transporting equipment to or from the beach, they must obtain prior approval from a designated employee of the City. The Proposer will ensure that only employees with a valid license operate such vehicles and that operators conform to the following regulations:
 - a. Vehicle use will be restricted to weekday mornings when beach visitation is lowest. (During nesting season vehicle usage on the beach can only occur after receiving approval from turtle monitors and drivers must be cognizant to avoid sea turtle nests.) The city may amend this requirement in the event of an emergency such as a hurricane which necessitates prompt relocation of equipment.
 - b. Vehicle operators will limit distractions and direct attention to operating the vehicle in a manner that maximizes the safety of beach patrons. Cell phones will not be used while vehicles are being operated.

3. The Proposer will remove all debris and litter within fifty (50) feet of all concession areas or within fifty (50) feet of any area where equipment is placed. Debris and litter removal will be conducted throughout the day of operation. The Proposer will complete debris and litter removal by disposing of any items within fifty (50) feet of equipment. The debris and litter removed by the Proposer will include but not be limited to cigarette butts, bottle caps, and any glass, plastic, paper, and metal objects.

4. The Proposer will maintain the main beach walkway (ADA accessible mat) located in the immediate vicinity of the Atlantic Avenue pavilion. The Proposer will maintain this walkway on a daily basis by sweeping and keeping it free of sand and debris.

3.7 HOURS OF OPERATION

Proposer shall be responsible for Concession operations during the dates, time, and circumstances detailed herein. The Beach Concessions shall be required to be open for business every day year-round, notwithstanding any exceptions stated herein. Exceptions may be requested by the Proposer and granted by the City Manager or required by the City Manager to accommodate special events, unusual circumstances, or force majeure events. All dates and times are subject to change at the City's sole discretion,

1. The Beach Concession Operating hours shall open during those hours in which City lifeguards are on duty, which are 9:00 am to 5:00 p.m. Monday through Sunday from November through February and 9:00 am to 6:30 pm Monday thru Sunday from March thru October. Exceptions shall only be considered when inclement weather conditions do not warrant the operation of the Beach Concessions or with an advanced request for such change and approval by the City Manager.

3.8 RATES CHARGED FOR BEACH EQUIPMENT

1. Resale and Rental Rates and Fees –

All resale and rental for concessions and amenities rates shall be visibly posted on the Premises at all times during operation. All rate signage must be preapproved by the City Manager or his designee. All rate signage locations must be approved by the City Manager or his designee. All rates shall be consistent with those rates and fees for similar services and merchandise in recreational facilities and tourist attractions in the Dade, Broward, and Palm Beach County market, and shall be proposed by the Proposer based upon its reasonable judgment. All rental rates for beach umbrellas, chairs, cabanas, and similar beach equipment or packages which include a standard set-up as noted above shall be approved by the City Manager.

2. Payment Methods

Proposer shall at a minimum accept the following payment methods for all Concessions:

- a. Three (3) major credit cards including at least two (2) of the following: Visa, MasterCard, or American Express for transactions of at least five dollars (\$5.00).
- b. Debit Card
- c. Cash

Any increase in rental rates must be submitted in writing with adequate justification and have prior approval of the City Manager or his designee prior to being implemented. All rentals of equipment shall include at a minimum a one-half day- (1/2) and full-day rental rate.

The Proposer shall furnish to the City a schedule of rental charges on all equipment. The Proposer shall provide monthly reports of the income generated from the sales.

3.9 ADVERTISING AND SIGNS

Unless approved by the city, the Proposer shall not display or distribute any signs or advertising material on the public beach.

3.10 PARKING REQUIREMENTS

No parking spaces will be provided by the City of Delray Beach.

3.11 PROPOSER STAFF

1. During all hours of operation, the Proposer shall maintain adequate on-duty personnel to comply with all terms and conditions of this contract. A minimum of one (1) staff member employed by the Proposer will be stationed at each of the equipment storage areas during hours of operation.

The Proposer will employ workers to service this operation who are literate, neat, clean, well-groomed and courteous.

2. An experienced manager shall be present during all hours of operation to oversee the daily operation of this concession, will have the authority to direct the operation and immediately take any actions required to correct erroneous procedures. This manager will ensure complete and continuous compliance with the requirements and specifications of this contract at all times the concession is in operation and notify the Director of Parks and Recreation immediately of any non-compliance or issues with operations.
3. Upon execution of this contract the City Manager or his/her designee and the Proposer shall establish a standardized uniform to be worn by all employees of the Proposer. The city will seek input from the Proposer when determining the uniform; however, the city will make the final decision in determining uniforms which will consist of a shirt, shorts, hats, and visible identification. The Proposer will be responsible for the cost and acquisition of uniforms for all staff. Employees of the Proposer will wear the established standard uniform in clean and professional condition whenever on duty during hours of operation.

4. The Proposer and staff of the Proposer shall adhere to all City ordinances and be cognizant and vigilant in following all regulations posted at the beach or any regulation delivered by city employees who are authorized to ensure compliance and or public safety. The Proposer and staff of the Proposer will immediately vacate the municipal beach when the city determines that the beach must be closed due to lightning or for any other reason. When the beach is closed to the public the Proposer and his staff will not attempt to continue service or work in any capacity.
5. "Hawking" to attract attention and/or summoning or accosting any person is prohibited. The playing of music or allowing other activity that disturbs the public is prohibited.

3.12 LICENSES

The Proposer shall maintain a valid yearly City local business tax receipt. Proposer shall make application for and obtain at its own expense all necessary permits, if any, from the Division of Beaches and Shores of the Department of Environmental Protection, State of Florida. Any permits and the expense of obtaining such shall be at no cost to the City of Delray Beach.

3.13 SELECTED PROPOSER'S RESPONSIBILITY

The selected Proposer shall be responsible for ensuring that all its employees are in compliance, at all times, with the Terms, Conditions and Specifications outlined in this Request for Proposal.

The selected Proposer shall be responsible for obtaining all necessary permits, licenses, and/ or registration cards in compliance with all applicable Federal, State, and Local statutes pertaining to the services as specified or required.

3.14 SUPERVISION

The selected Proposer shall provide an adequate number of trained, qualified Supervisors capable of providing adequate supervision to provide the services. The City shall not have any responsibility for supervising or managing the selected Proposer's staff or medical professionals.

Each Supervisor, to the satisfaction of the City, shall be capable of verbal and written communication in English and shall be able to adequately communicate with the service workers.

The City may request the selected Proposer to remove any Supervisor if it is determined the individual is not performing the services in accordance with the terms and conditions of the Contract.

3.15 EMPLOYEES

Persons employed by the selected Proposer in the performance of services pursuant to this Proposal shall not be considered employees of the City, shall be independent thereof; and shall have no claim against the City as to pension, workers' compensation, insurance, salary, wages, or other employee rights or privileges granted by operation of law; and shall be 18 years of age or older.

Under no circumstances will any employee of the selected Proposer be permitted to allow minors (under 18 years of age) and/ or anyone who is not an employee of the selected Proposer to enter any non- public area of any City facility at any time for any reason.

3.16 COMPLAINTS

The City provides an email address that will be checked at least once per day as a means to respond to

patron complaints or requests or for correspondence with the City of Delray Beach. All complaints received by the Proposer shall be directed to be sent to the City's email address parks&recreation@mydelraybeach.com. Any complaints received in writing shall be forwarded to the Director of Parks and Recreation within 24 hours of receipt.

Inspections by the City of Delray Beach will take place throughout the contract period. Complaints shall be documented and forwarded to the selected Proposer for immediate resolution. It is the responsibility of the selected Proposer to resolve all complaints with 24 hours of notification from the City.

3.17 PROTECTION OF PROPERTY

The selected Proposer shall at all times guard against damage or loss to the property of the City of Delray Beach and shall be held responsible for replacing or repairing any such loss or damage. The City may withhold payment for services in lieu of reimbursement or replacement for loss or damage to property attributed to negligence of the selected Proposer, its staff or agents.

3.18 HURRICANE EVACUATION PLAN

The Proposer agrees that all equipment will be removed from the beachfront within one (1) hour of notification by the appropriate City authorities and stored at an approved, private, off- site location. The Proposer will include a detailed hurricane preparedness/evacuation plan, which shall include the location and proof of ownership and/or control by the Proposer (either through a deed, lease or other form satisfactory to the city) of a proposed hurricane storage facility, must be provided in their response and proposal to this RFP.

3.19 SPECIAL EVENTS

The City will hold sponsored and co-sponsored events and activities on the beach from time to time. In such cases, the City may request that the Proposer cease and desist operations during the term of, and in the area of the special event and/or production, and the Proposer shall cease and desist during said term.

If the Proposer is not required to close, or if granted permission by the City and chooses to remain open without interference to the special event and/or Proposer agrees to cooperate with the City. During such events, the Proposer may be allowed to continue operations or be assigned a temporary location elsewhere within close proximity of the original assigned site.

During the event, the Proposer has the option of operating his/her equipment from the temporary site or stopping operations until the event is over. The City reserves the right to allow other rental of concessions to operate upon the original assigned site or in close proximity to that site during special events as may be approved by the City.

3.20 ADDITIONAL AMENITIES

Additional Amenities may include, but are not limited to, beach equipment upgrades, equipment color changes, day beds, and sunscreen lotion. Additional Amenities shall not include Alcoholic beverages, clothing or any other items for sale, or any activity that would limit or curtail public use of the beach. All proposed Additional Amenities and related pricing and plans are subject to approval by the City.

3.21 SECURITY AND IDENTIFICATION

The selected Proposer shall take all measures necessary to comply with and to ensure that employees comply with the security rules and regulations of the City and all Federal, State and County rules, laws, and regulations.

Employees of the selected Proposer serving hereunder shall not use controlled substances not prescribed for them, or illegal substances on or off the City's premises, and shall not use alcohol on the City's premises or preceding their work shift which would in any way affect the performance of the services.

The selected Proposer shall attest in writing that a background check, to the extent allowed by law, of employment history and references has been conducted on each employee within four (4) weeks of initial employment. The City shall have the right to request any additional investigative background information, including, but not limited to, the employment record of any personnel assigned to perform the services. The selected Proposer shall furnish, in writing, such information to the extent allowed by law within thirty (30) calendar days after notification from the City's Human Resources Administrator or designee.

The City reserves the right to conduct its own investigations into any employee of the selected Proposer. The selected Proposer shall remove from service on the premises of the City any employee of the selected Proposer who, in the opinion of the City, is not performing the services in a proper manner; or who is incompetent, disorderly, abusive, dangerous, or disruptive or does not comply with the rules and regulations of the City. Such removal shall in no way be interpreted to require dismissal or other disciplinary action of the employee by the selected Proposer.

3.22 REPAIRS

The selected Proposer shall promptly notify the City of any needed repairs and/or damage to fixtures, building, and appurtenances observed during the performance of the services. Any item of a critical, priority, or emergency nature shall be verbally reported immediately to the City upon discovery, with written notification to follow prior to the end of the work shift.

END OF SECTION 3

SECTION 4 REVENUE PROPOSAL

4.1 MINIMUM ANNUAL GUARANTEE:

Proposers should use this form for submitting its revenue proposal. Proposed revenues to the City will include the annual concession fee that is generated, in accordance with the requirements identified in this Scope of Work, and as set forth in this RFP document.

The revenue fee information shall be clear and unambiguous to allow the City's Selection Committee/Evaluation Team to compare the prices from the different Proposers. Fees that are unclear and ambiguous may be determined by the City to be grounds for rejection of the proposal.

The aggregate five (5) year total for the Minimum Annual Guarantee will be used to calculate points to rank each proposal. The minimum Annual Guarantee amount calculated herein shall be payable to the City in twelve (12) equal instalments coinciding with the 10th day of the next calendar month.

All payments shall be presented, in the form of a cashier's check or certified check, payable to the City of Delray Beach.

The failure of the first ranked proposer to comply with the payment schedule as stated will result in the disqualification of this proposer and award of contract to the second ranked proposer.

NOTE: APPLICABLE FLORIDA STATE SALES TAXES SHALL BE ADDED TO THE ABOVE LISTED ANNUAL CONCESSION FEE.

4.2 ANNUAL NET COLLECTIONS IN EXCESS OF MINIMUM ANNUAL GUARANTEE (REVENUE SHARING):

In addition to the Minimum Annual Guarantee, **Ten (10%)** percent of the Contractor's annual gross revenue net of sales tax collected, in excess of the minimum guaranteed annual concession fee, derived from the Contractor's rental and/or sale of any and all items offered to customers in the operation of the Beach Equipment Rental Concession and Additional Amenities in accordance with the terms of this bid. All percentage amounts should be rounded to the nearest whole percentage.

Within sixty (60) days after the end of each contract year the Contractor shall deliver to the City a written annual statement of the gross revenue of the contract year together with such payments. All payments shall be submitted to the Parks and Recreation Department.

A maximum of twelve (10) points will be awarded for the Proposer's Percentage Annual Gross Revenue using the Points Formula below:

****Tier 1** - First two (2) years: (Proposer's Percentage Offer/Highest Percentage Proposed) x (Maximum Number of Points (5)) = Percentage Split Score.

****Tier 2** - Remaining three (3) years: (Proposer's Percentage Offer/Highest Percentage Proposed) x (Maximum Number of Points (5)) = Percentage Split Score.

REVENUE GENERATING PROPOSAL

The tables below MUST be completed and submitted with your proposal. Failure of the Proposer to complete and sign the Revenue Generating Proposal SHALL determine the Proposer to be **NON-RESPONSIVE** to the solicitation. All blank areas in the tables below MUST be filled in with a dollar figure.

MINIMUM ANNUAL GUARANTEE

The Minimum Annual Guarantee for advertising revenue shall be **NO LESS THAN \$35,984.42/month or \$431,813/year** for the first two (2) years and **NO LESS THAN \$37,783.67/month or \$453,404/year** for the remaining three (3) year **contract term** of the contract. Failure to complete **ALL** of the foregoing requirements at the time of submittal **SHALL** determine the Proposer to be **NON-RESPONSIVE** to the Solicitation. The aggregate five (5) year total for the Minimum Annual Guarantee will be used to calculate points to rank each proposal. The **Points Formula** for the Minimum Annual Guarantee is as follow: ***Minimum Annual Guarantee: (Proposer's Minimum Annual Guarantee/Highest Proposed Minimum Annual Guarantee) x (Maximum Number of Points for Minimum Annual Guarantee (20)) = Minimum Annual Guarantee Score.**

Annual Periods for Initial 3-Year Term	(A) Minimum Monthly Guarantee	(B) Minimum Annual Guarantee
Year One		
Year Two		
Year Three		
Year Four		
Year Five		
TOTAL (Years 1-5)		

TOTAL REVENUE GENERATING PROPOSAL (for Years 1-5): \$ _____

Proposed Guarantees for Minimum Annual Guarantee for the entire five (5) years (contract term) shall be **NO LESS THAN \$2,223,838.00.**

**ANNUAL NET COLLECTIONS IN EXCESS OF THE MINIMUM ANNUAL GUARANTEE
(REVENUE SHARING)**

Ten (10%) percent of the Contractor's annual gross revenue net of sales tax collected, in excess of the minimum guaranteed annual concession fee, derived from the Contractor's rental and/or sale of any and all items offered to customers in the operation of the Beach Equipment Rental Concession and Additional Amenities in accordance with the terms of this contract.

Within sixty (60) days after the end of each contract year the Contractor shall deliver to the City a written annual statement of the gross revenue of the contract year together with such payments. All payments shall be submitted to the Parks and Recreation Department.

A maximum of twelve (10) points will be awarded for the Proposer's Percentage Annual Gross Revenue using the **Points Formula** below:

****Tier 1 - First two (2) years: (Proposer's Percentage Offer/Highest Percentage Proposed) x (Maximum Number of Points (5)) = Percentage Split Score.**

****Tier 2 - Remaining three (3) years: (Proposer's Percentage Offer/Highest Percentage Proposed) x (Maximum Number of Points (5)) = Percentage Split Score.**

Failure of the Proposer to complete and sign this Proposal **SHALL** determine the Proposer to be **NON-RESPONSIVE** to the solicitation.

	Annual Net Collection (for each Contract Year)	Minimum Percentage Split Tiered Rates	Contractor's Proposed Percentage Split Tiered Rates
Tier 1:	> \$431,813 (in excess of)	10%	
Tier 2:	> \$453,404 (in excess of)	10%	

PROPOSER

Signature:	
Print Name (individual signing above):	
Print Title:	
Company Name (if incorporated):	
Date:	

END OF SECTION 4

SECTION 5
EXHIBITS

5.1 EXHIBITS - NONE

END OF SECTION 5

SECTION 6 RESPONSE REQUIREMENTS

6.1 SUBMITTAL REQUIREMENTS

Proposers should carefully follow the format and instructions outlined herein. All documents and information must be fully completed and signed as required. Do not password-protect electronic documents.

The Proposal shall be written in sufficient detail to permit the City to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

6.2 REQUIRED INFORMATION

In addition to the information required in Section 3, Scope of Services, Proposers must submit the following information with their Proposals:

a. SUBMITTAL FORMAT

To facilitate and expedite review, the City asks that all Proposers follow the response format outlined below. Failure to submit your response in the format requested may result in delay evaluating your Proposal. To assist you in preparing your response, the City's selection procedures are also described herein. Proposers must abide by all requirements set forth to avoid any risk of disqualification.

b. PROPOSALS SHOULD FOLLOW THE FORMAT BELOW:

TAB 1 – INTRODUCTION

Provide a cover letter no longer than two (2) pages in length, signed by an authorized representative of your firm. Provide a positive commitment to provide the required services. Also, the letter should disclose the name of the contracting agent and primary contact person, his/her title, address, phone number, and email address. The table of contents should follow the cover letter.

TAB 2 – TABLE OF CONTENTS

Include a clear identification of the material included in the Proposal by page number.

TAB 3 – MINIMUM QUALIFICATIONS

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

- A. Must be registered with the States of Florida, Division of corporations to do business in Florida.

No documentation is required. The City will verify registration.

- B. Proposer has provided Beach Rental Concessions for at least three (3) non-city clients for a minimum of five (5) years. Provide the following information for the three (3) qualifying clients.

- i. Name of Client
- ii. Location (City/State)

- iii. Client contact name
 - iv. Contact phone
 - v. Contact email
 - vi. Project dates (Start/End)
 - vii. Performance period
 - viii. Total amount of contract/and all revenue paid
- C. Proposer is NOT listed on the Florida State Board of Administration, Scrutinized List of Prohibited Companies found at:

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/scrutinized_list_of_prohibited_companies

Provide an executed copy of the Scrutinized Company Certification form.

- D. Proposer has no reported conflict of interests in relation to this solicitation.

Disclose the name of any officer, director or agent who is also an employee of the City. Disclose the name of any City employee who owns, directly or indirectly, any interest in the Proposer's firm or any of its branches. If no conflicts of interests are present, Proposer must submit a statement to that affect.

TAB 4 – PROPOSER'S INFORMATION

- A. Legal contracting name including any dba and state of organization or incorporation.
- B. Ownership structure of Proposer's company (e.g., Partnership, Limited Liability Corporation, Corporation).
- C. Provide, in this section, a completed and executed copy of Proposer's W-9 that includes the company federal identification number.
- D. Contact information for Proposer's Corporate headquarters and any offices in Palm Beach and Broward counties to include the following:
 - i. Address
 - ii. City, State, Zip
 - iii. Phone
- E. Contact information for Proposer's primary and secondary representative during this solicitation process.
 - i. Name
 - ii. Phone
 - iii. E-mail
 - iv. Mailing Address
 - v. City, State, Zip

- F. Provide details of any ownership changes to Proposer's organization in the past three years or changes anticipated within six months of the Due Date and Time (e.g., mergers, acquisitions, changes in executive leadership).
- G. Provide the names of the persons who are officers or principals of the company.
- H. Any additional organizational information that the Proposer's wishes to supply to augment its Proposal.
- I. Provide its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for any material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- J. Provide information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors, is or has been involved within the last three (3) years.

TAB 5 – EXPERIENCE, ABILITY AND REFERENCES

- A. Provide details of Proposer's years of experience in the field of Beach Equipment Rental Concession. Include number of projects, dollar values and number of years in business.
- B. Provide a brief description of Proposer's team, the organization, its structure, and philosophy.
- C. Provide Proposer's years of experience in Beach Equipment Rental Concession Services.
- D. Describe Proposer's experience in Beach Equipment Rental Concession Services for other government agencies that included the following:
 - i. Equipment set-up and Location Plan
 - ii. Hurricane evacuation plan
 - iii. Management staffing plan
 - iv. Maintenance of Equipment Concession Area Plan
 - v. Method proposed to anchor umbrellas, and windbreaker/clamshells
- E. Describe any significant or unique awards received or accomplishments in previous similar projects.
- F. Identify and include information regarding experience and qualifications of Proposer's Staff to be assigned to the Project. Include their names, certifications and/or licenses and services the individuals will provide to the City.

TAB 6 – APPROACH AND CAPACITY

- A. Provide a narrative of the proposed approach and methodology for engaging with City representatives while in the course of performing the duties.
- B. The overall approach to delivering the Scope of Services and any strategies Proposer proposes to implement.
- C. Provide in your proposal the type of equipment that you plan to provide for rental including:
 - i. Specifications
 - ii. Photos or brochures of the equipment

- D. Details of implementation plan and schedule.
- E. How many calendar days from award of Contract would you need prior to initiating operations?
- F. Proposer shall thoroughly explain:
 - i. Its accessibility in the areas of availability for meetings, general communications, coordination, and supervision
 - ii. How the proposer physically plans on attending pre-scheduled meetings.
 - iii. How the proposer plans on ensuring accessibility and availability during the term of the Agreement.
 - iv. Submit details of Proposer's staffing resources, at the location that will provide services to the City as well as corporately, by discipline and the number of personnel with each discipline.
 - v. Submit an organizational diagram clearly identifying key personnel as well as other staffing resources who are designated to provide services to the City and indicate their functional relationship to each other.

TAB 7 – ADDITIONAL AMENITIES

In this Section, include information regarding proposed Additional Amenities, rental, and sales potential of such activities. **See Section 3.20**

TAB 8 – PROPOSED MINIMUM ANNUAL GUARANTEE

In this Section, include information regarding estimated annual gross sales (excluding sales tax) Proposer anticipates along with documentation that substantiates the feasibility of attainment of those revenue goals on a consistent basis.

- i. List your proposed rental rates for each contract year.
- ii. Describe equipment and listed proposed rates for an hour, more than an hour, half day, full day and any other rental arrangements.
- iii. The Balance Sheet and Statement of Profit and Loss of the awarded firm may be requested from the City prior to finalizing the contract. The statement should be from the preceding calendar or fiscal year, certified by either an appropriate Corporate Officer, or an independent Certified Public Accountant. If the Contractor is a privately held corporation, provide such records, for City review, at a time and place convenient to the City, will satisfy this requirement.

END OF SECTION 6

SECTION 7 THE EVALUATION PROCESS

7.1 REVIEW OF PROPOSALS FOR RESPONSIVENESS

Each Proposal will be reviewed to determine if the Proposal is responsive to the submission requirements outlined in this solicitation. A responsive Proposal is one that follows the requirements of this solicitation, includes all documentation, is submitted in the format outlined in this solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the Proposal being deemed non-responsive.

7.2 REVIEW OF PROPOSALS FOR RESPONSIBILITY

Each Proposer will be reviewed to determine if the Proposer is a responsible Proposer. A responsible Proposer is a Proposer which the City affirmatively determines (prior to the award of a contract) has the ability, capability, and skill to perform under the terms of the contract; can provide the materials or service promptly within the time specified, without delay or interference; has a satisfactory record of integrity and business ethics; and meet the Minimum Qualification requirements in this solicitation.

7.3 EVALUATION CRITERIA

Proposals will be evaluated by an Evaluation/Selection Committee that will evaluate and rank Proposals on the criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate City personnel and/or members of the community, as deemed necessary, with the appropriate experience and/or knowledge. The criteria are itemized with their maximum scores for a maximum total of **one hundred (100)** points per Evaluation/Selection Committee member.

<u>CRITERIA</u>	<u>MAX. POINTS</u>
a. Experience, Background and Service Record	30
b. Approach and Capacity	25
c. Performance and Services	15
d. Minimum Annual Guarantee (MAG)	20
e. Annual Net Collection (Revenue Sharing)	10

7.4 ORAL PRESENTATIONS

Upon initial completion of the criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. Upon completion of the oral presentation(s), the Evaluation/Selection Committee will perform a final review to re-evaluate, re-rate, and re-rank the Proposals remaining in consideration based upon the written documents, combined with the oral presentation. In such circumstances, the initial ranking of the Proposers shall be considered a preliminary ranking until after the oral presentations are completed.

7.5 PRICE OFFERS AND EVALUATION

After the evaluation of the technical areas of the Proposal, the City will evaluate the revenue aspects of the Proposal. The City will use the prices submitted by each Proposer to estimate the total cost of the Proposer's

services. The Proposer that submits the highest total proposed revenue for all combined services will be awarded the maximum number of points (20). The total points awarded for price is determined by applying the following formula: $(\text{Proposer's Minimum Annual Guarantee}/\text{Highest Proposed Minimum Annual Guarantee}) \times (\text{Maximum Number of Points for Minimum Annual Guarantee (20)}) = \text{Minimum Annual Guarantee Score}$. The Proposer that submits the highest percentage tiered rates for the combined services will be awarded the maximum number of points (10). A maximum of twelve (10) points will be awarded for the Proposer's Percentage Annual Gross Revenue using the Points Formula below: Tier 1 - First two (2) years: $(\text{Proposer's Percentage Offer}/\text{Highest Percentage Proposed}) \times (\text{Maximum Number of Points (5)}) = \text{Percentage Split Score}$. Tier 2 - Remaining three (3) years: $(\text{Proposer's Percentage Offer}/\text{Highest Percentage Proposed}) \times (\text{Maximum Number of Points (5)}) = \text{Percentage Split Score}$.

The pricing evaluation is used as part the evaluation process to determine the highest-ranked Proposer. The City reserves the right to negotiate the final terms, conditions, and pricing of the contract as may be in the best interests of the City.

7.6 NEGOTIATIONS

If the City and the Proposer(s) cannot reach agreement on a contract, the City reserves the right to terminate negotiations and may, at the City Manager's or designee's discretion, begin negotiations with the next highest-ranked Proposer(s). This process may continue until a contract acceptable to the City has been executed or all Proposals are rejected. No Proposer shall have any rights against the City arising from such negotiations or termination thereof.

7.7 CONTRACT AWARD

Any contract resulting from this solicitation will be submitted to the City Manager or designee, and the City Commission for approval, as appropriate. All Proposers will be notified in writing when the City Manager or designee makes an award recommendation. The contract award, if any, shall be made to the Proposer whose Proposal shall be deemed by the City to be in the best interest of the City. Notwithstanding the rights of protest listed herein, the City's decision of whether to make the award and to which Proposer shall be final.

END OF SECTION 7

SECTION 8 PROPOSAL SUBMITTALS

8.1 FORMS

The forms listed below must be completed by an official having legal authorization to contractually bind the company or firm. Each signature represents a binding commitment upon the Proposer to provide the goods and/or services offered to the City if the Proposer is determined to be the most responsive and responsible Proposer. Solicitation forms should be submitted via web forms available on <https://www.periscopeholdings.com/s2g> when submitting an electronic proposal. Web forms require Proposers to use their <https://www.periscopeholdings.com/s2g> password to submit, which serves as a signature from Proposer.

- a. Acknowledgment of Addenda
- b. Proposal Submittal Signature Page
- c. Conflict of Interest Disclosure Form
- d. Notification of Public Entity Crimes Law
- e. Notification of Public Records Law
- f. Drug-Free Workplace
- g. Non-Collusion Affidavit
- h. Truth-In-Negotiation Certificate
- i. Scrutinized Company
- j. Conditions of Purchase
- k. Sample Performance Bond Format (if required, will be requested from the Proposer recommended for award)
- l. Sample Payment Bond Format (if required, will be requested from the Proposer recommended for award)
- m. Sample Letter of Credit Format (if required, will be requested from the Proposer recommended for award)

ACKNOWLEDGEMENT OF ADDENDA

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

PART I:

List below the dates of issue for each addendum received in connection with this solicitation:

Addendum #1, Dated _____

Addendum #2, Dated _____

Addendum #3, Dated _____

Addendum #4, Dated _____

Addendum #5, Dated _____

Addendum #6, Dated _____

Addendum #7, Dated _____

Addendum #8, Dated _____

Addendum #9, Dated _____

Addendum #10, Dated _____

PART II:

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS SOLICITATION

Firm Name

Signature

Name and Title (Print or Type)

Date

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 Employer Identification Number: _____

Prompt Payment Terms: _____% _____ days' net _____ days

Signature: _____
(Signature of authorized agent)

Print Name: _____

Title: _____

Date: _____

By signing this document, the Proposer agrees to all terms and conditions of this solicitation and the resulting contract/agreement.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL, FOR NOT LESS THAN 120 DAYS, AND THE PROPOSER'S UNEQUIVOCAL OFFER TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS SOLICITATION. 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.

CONFLICT OF INTEREST DISCLOSURE FORM

The award of this contract is subject to the provisions of Chapter 112, *Florida Statutes*. All Proposers must disclose within their Proposal: the name of any officer, director, or agent who is also an employee of the City of Delray Beach.

Furthermore, all Proposers must disclose the name of any City employee who owns, directly or indirectly, an interest of more than five percent (5%) in the Proposer’s 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 evaluation team members and other key personnel involved in the award of this 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 due to any other Cities, Counties, contracts, or property interest for this Proposal.

_____ 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 Proposal.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

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

Name and Title (Print or Type)

Date

**Notification of Public Records Law Pertaining to Public Contracts and Requests
for Contractor Records Pursuant to Chapter 119, *Florida Statutes***

Pursuant to Chapter 119, *Florida Statutes*, Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Delray Beach in order to perform the service. Upon request from the City of Delray Beach' custodian of public records, contract shall provide the City of Delray Beach with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes* or as otherwise provided by law. Contractor shall 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 records to the City of Delray Beach. Contractor upon completion of the contract, shall transfer, at no cost, to the City of Delray Beach all public records in possession of the Contractor or keep and maintain public records required by the City of Delray Beach in order to perform the service. If the Contractor transfers all public records to the City of Delray Beach 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 records stored electronically must be provided to the City of Delray Beach, upon request from the City of Delray Beach' custodian of public records, in a format that is compatible with the information technology systems of the City of Delray Beach.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OFFICE OF THE CITY CLERK LOCATED AT 100 NW 1ST STREET, DELRAY BEACH, FLORIDA 33444, PHONE NUMBER (561) 243-7000, EMAIL ADDRESS: JOHNSONK@MYDELRAYBEACH.COM.

Acknowledged:

Firm Name

Signature

Name and Title (Print or Type)

Date

DRUG-FREE WORKPLACE

_____ is a drug-free workplace and has
(Company Name)
a substance abuse policy in accordance with and pursuant to Section 440.102, *Florida Statutes*.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

NON-COLLUSION AFFIDAVIT

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

a. He/She is _____ of _____, the Proposer that has submitted a Proposal to perform work for the following:

RFP No.: _____ Title: _____

b. He/She is fully informed respecting the preparation and contents of the attached Request for Proposals, and of all pertinent circumstances respecting such solicitation.

Such Proposal is genuine and is not a collusive or sham Proposal.

c. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the solicitation and contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such solicitation and contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm, or person to fix the price or prices in the attached Proposal or any other Proposal, or to fix any overhead, profit, or cost element of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City or any person interested in the proposed contract.

d. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _ day of _____, 20_, by _____ (name of person acknowledging).

Personally known ___OR Produced Identification
Type of Identification Produced _____

Notary Public – State of _____

TRUTH – IN – NEGOTIATION CERTIFICATE

The undersigned warrants (i) that it has not employed or retained any company or person, other than bona fide employees working solely for the undersigned, to solicit or secure the Agreement and (ii) that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than its bona fide employees working solely for the undersigned or agreed to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement.

The undersigned certifies that the wage rates and other factual unit costs used to determine the compensation provided for in the Agreement are accurate, complete, and current as of the date of the Agreement.

(This document must be executed by a Corporate Officer.)

Name: _____

Title: _____

Date: _____

Signature: _____

Scrutinized Company Certification

This certification is required pursuant to Florida State Statute Section 287.135.

As of July 1, 2011, a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

Companies must complete and return this form with its response.

Company. _____ FID or EIN No. _____

Address. _____

City. _____ State. _____ Zip. _____

I, _____, as a representative of _____ certify and affirm that this company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Signature

Title

Printed Name

Date

CONDITIONS OF PURCHASE

1. **ACCEPTANCE:** This order is for the purchase of goods and/or services (herein referred to as "the Articles" described on the front side herein). The Buyer's offer to the Seller and the Seller's acknowledgment to the Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions herein set out. In the absence of such acknowledgement, commencement of delivery of the Articles and/or services and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed agreement between the parties providing otherwise. In the event of a conflict, Buyer's terms and conditions prevail.
2. **WARRANTY-PRODUCT:** The Seller expressly warrants that the Articles shall be merchantable within the meaning of Articles 2-314 (2) of the Uniform Commercial Code as provided by Florida Law and in effect on the date of this order. In addition to all warranties which may be prescribed by law the Articles shall conform to specifications, drawing, and description and shall be free from defects in materials and workmanship. Seller also warrants that the extent the Articles are not manufactured pursuant to detailed designs furnished by Buyer, that they will be free from defects in design. Such warranties, including warranties prescribed by law shall run to Buyer, its successor, assigns, and customers, and to users of the Articles for a period of one (1) year after delivery unless otherwise stated.
3. **INDEMNITY AND INSURANCE:** (a) Seller shall defend, indemnify and hold Buyer, its employees, its customers and users of the purchased Articles, harmless from any property damage, personal injuries, or death arising out of Seller's (or its subcontractor's) work or performance hereunder and shall procure and maintain liability insurance, including contractual liability coverage, with minimum limits of \$300,000 combined single limits to be effective during period of warranty with such higher limits as Buyer shall reasonably request of Seller. Seller shall on or before delivery of the Articles purchased hereunder, furnish to Buyer a Certificate of Insurance evidencing the foregoing coverage and limits. (b) Seller shall defend, indemnify and hold Buyer harmless from the assessments by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the Articles purchased hereunder. (c) Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, agents and employees from and against any and all damages, charges, losses, (including the cost of any Articles lost by libel, condemnation, or voluntary recall) actions, and proceedings brought by the United States of America, or any State government or any agency or instrumentality thereof against Buyer, its officers, directors, agents and/or employees or assigns on such Articles by reason of any claim or findings by and said public authority that any such Articles are not as herein guaranteed.
4. **TERMINATION:** (a) Buyer may terminate this order, in whole or in part without liability to Buyer, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the other terms or conditions hereof. (b) Buyer may terminate this order in whole or in part, at any time for its convenience, by noticing to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder and stop the placement of subcontractors, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim must be submitted to Buyer within sixty (60) days after the effective date of the termination. (c) Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. (d) Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto.
5. **COMPLIANCE WITH LAWS:** Seller guarantees to Buyer that the Articles comply with all federal, state, and local laws, regulations, declarations, interpretations, and orders issued thereunder.
6. **CONTROLLING LAW:** This order and the performance of the parties hereunder shall be controlled and governed by the law of the State of Florida, and the venue shall be in Palm Beach County, Florida.

7. GENERAL: All warranties shall be construed as conditions as well as warranties. No waiver of a breach or any provision of this order shall constitute a waiver of any other breach or provision. No modification or change in, or departure from, or waiver of the provisions of this order shall be valid or binding unless approved by Buyer in writing. This order shall constitute the entire agreement between the parties. The Seller expressly agreed that any terms or conditions contained on any form or agreement other than this agreement, unless specifically agreed to otherwise by Seller and Buyer, which are not in full accord with the above stated agreement and its terms, shall be null and void.
8. ALLOCATION OF RISK: This risk for any damage to or destruction of the goods shall be borne by the Seller at all times until delivery to the control of the Buyer, which shall be the point at which the Buyer actually receives the goods for use and has accepted such.
9. COURSE OF PERFORMANCE: The fact that a party may accept or acquiesce in a course of performance under this agreement does not affect the meaning of this agreement even though the accepting/acquiescing party knows of the nature of the performance and has an opportunity to object to it. (With respect to this course of performance provision, any time an individual attempts to perform under the contract in a manner which is not in accord with the terms of the contract, the City must promptly object to the manner of performance.)
10. PAST PRACTICES: The previous customs and practices of the parties hereto shall not be deemed a waiver or modification of the terms hereof.
11. REPAIRS - NON-ACCEPTANCE: If any of the goods are delivered in a defective or non-working condition, efforts of the Buyer to correct such defect shall not constitute an acceptance where commercially reasonable in extent and cost, so that the Buyer may still reject the goods where the attempt to repair has proved unsuccessful.
12. PLACE OF DELIVERY: The goods shall be delivered to the City of Delray Beach, Florida, at address as stated on front.
13. INSPECTION GOODS: The Buyer shall have the right to inspect all goods before accepting delivery or making payment, therefore. If rejected, the goods will be returned at Seller's risk, and all handling and transportation expenses, both ways, will be borne by and assumed by Seller. When material has been rejected by Buyer and returned for replacement it is essential that Seller receive new shipping instructions from Buyer before making the replacement. Inspection and approval for acceptance shall be made by the appropriate user department. The expense of inspection shall be borne by the Buyer except as to goods which are properly rejected as non-conforming. Inspection shall be made within fourteen (14) calendar days of the delivery of goods.
14. NOTICE OF DEFECTS: It is expressly agreed that all claims for alleged damages or defective goods, shortage, or other cause shall be deemed waived unless made in writing and sent by Buyer within twenty (20) calendar days after Buyer learns of the alleged defect, damage, shortage, or other cause giving rise to the claim, provided, however, that any defects incapable of discovery shall not be deemed waived by the provisions herein, and, provided further, that this provision shall not be deemed a waiver of any warranties set forth herein or in any modification to this agreement.
15. FITNESS FOR PARTICULAR PURPOSE: Buyer makes no warranties except as set forth herein, provided, however, that notwithstanding any other provisions to the contrary herein, Buyer may have sought the expertise of Seller with respect to the fitness for a particular purpose of the subject goods and in purchasing said goods, may have relied upon the representations of Seller as an expert with respect to the use of such goods. In that event, Seller hereby agrees that any document exhibiting a request by Buyer for goods for a particular purpose, a reliance by Buyer upon the expertise of Seller with respect to the use of the goods, or any other similar such request or reliance shall constitute a modification to the terms of this agreement which shall effect a warranty of fitness for a particular purpose.
16. CONSEQUENTIAL DAMAGE: Seller acknowledges that Buyer has informed him that the goods are to be used by Buyer and that failure of Seller to fulfill the terms of this contract may result in consequential damages to Buyer because of the intended use to be made of the goods to the Buyer.
17. TAX EXEMPTION: The City of Delray Beach is exempt from Federal Excise Taxes. Where tax applies invoice must show gross, price, amount of tax, net price. Exemption certificate will be signed upon request.

SAMPLE PERFORMANCE BOND FORMAT

KNOW ALL MEN BY THESE PRESENTS: that _____

(Insert full name and address or legal title of successful Bidder)

as Principal, hereinafter called Contractor, and _____,
(Name of Insurer)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Obligee, hereinafter called the City, in the amount of _____,

(\$_____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

WHEREAS, Contractor has by written agreement dated _____, 20__, entered into Contract No. _____ with the City in accordance with the solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever Contractor shall be and declared by the City to be in default under the Contract, the City having performed City's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- a. Complete the Contract in accordance with its terms and conditions; or
- b. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the most responsible Bidder, or if the City elects, upon determination by the City and the Surety jointly of the most responsible Bidder, arrange for a Contract between such Bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the City to Contractor under the contract and any amendments thereto, less the amount properly paid by the City to the Contractor.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.

Signed and sealed this _____ day of _____, 20__.

(Principal) (Seal)

(Witness) (Title)

(Name of Insurer) Surety (Seal)

(Witness)

By: _____
(Attorney-in-Fact)

SAMPLE PAYMENT BOND FORMAT

KNOW ALL MEN BY THESE PRESENTS: that _____

(Insert full name and address or legal title of successful Bidder)

as Principal, hereinafter called Contractor, and _____,
(Name of Insurer)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Obligee, hereinafter called the City, in the amount of _____,

(\$ _____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

WHEREAS, Contractor has by written agreement dated _____, 20__, entered into Contract No. _____ with the City in accordance with the solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if said Contractor and all subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Contract and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, products, services, or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney’s fees, incurred by the claimants in suits on this bond, then the above obligation shall be void; otherwise, it shall remain in full force and effect.

HOWEVER, this bond is subject to the following conditions and limitations:

a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the Contractor and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the county in which the work provided for in said Contract is to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for his or their use and benefit against said Contractor and Surety or either of them (but not later than one year after the final settlement of said Contract) in which action such claim or claims shall be adjudicated, and judgment rendered thereon.

b) The Principal and Surety hereby designate and appoint _____

_____ as the agent of each of them to receive and accept service of process or other pleading issued or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the Contractor and/or Surety.

c) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said Contract.

d) This bond is given pursuant to and in accordance with the provisions of Florida Statutes, and all the provisions of the law referring to this character of bond as set forth in any sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.

Signed and sealed this _____ day of _____, 20__.

	(Principal)	(Seal)
(Witness)	(Title)	

	(Name of Insurer)	Surety (Seal)
(Witness)	By: _____	(Attorney-in-Fact)

SAMPLE LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: _____
ISSUANCE DATE: _____

APPLICANT:
{Name of Corporation} _____
{Address} _____
{City, State, Zip} _____

BENEFICIARY:
CITY OF DELRAY BEACH
100 NW 1st AVENUE
DELRAY BEACH, FLORIDA 33444

FOR U.S.D. \$ _____
DATE OF EXPIRATION: _____

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN FAVOR OF THE BENEFICIARY, THE CITY OF DELRAY BEACH, FLORIDA (HEREINAFTER "PBG") FOR THE ACCOUNT OF THE ABOVE-REFERENCED APPLICANT, AVAILABLE BY YOUR DRAFTS DRAWN ON (Insert name of Bank) PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF (Insert the amount of money), THE AMOUNT REFERENCED ABOVE.

DEMANDS OF THE LETTER OF CREDIT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CITY MANAGER OF THE CITY OF DELRAY BEACH CERTIFYING EITHER: (1) THAT SAID LETTER OF CREDIT IS ABOUT TO EXPIRE AND HAS NOT BEEN RENEWED, OR (2) THAT WORK HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND AGREEMENTS (INCLUDING ANY AMENDMENTS THEREOF) FOR THE FOLLOWING PROJECT: **{Name of Project}** _____ (THE 'PROJECT').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR FROM EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, WITHOUT ANY AMENDMENT, UNLESS THIRTY (30) DAYS BUT NO MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SHALL NOTIFY PBG IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR BY COURIER VIA HAND DELIVERY AT THE ABOVE-LISTED ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THE CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO **{Name of Bank}** _____ (THE 'BANK'), WHICH IS DULY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA IN ACCORDANCE WITH THE TERMS HEREOF. IF A DRAFT, AS DESCRIBED IN THIS LETTER OF CREDIT, IS PRESENTED PRIOR TO THE EXPIRATION DATE AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT AND UPON PRESENTATION IT IS WRONGFULLY DISHONORED BY THE BANK, THE BANK AGREES TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD PBG PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:
{Name of Bank Branch} _____

{Address} _____
{City, State, Zip} _____
ATTN: {Department} _____

ALL DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INSTRUMENT WHICH WILL BE RETURNED TO THE BENEFICIARY AFTER ENDORSING THE BACK OF SAME WITH THE AMOUNT OF EACH DRAWING BY US.

PARTIAL DRAWINGS ARE PERMITTED.

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE OF THE ORIGINAL CREDIT. ALL DRAFTS MUST BE MARKED "DRAWN UNDER {Name of Bank} _____ LETTER OF CREDIT NUMBER _____ DATED _____, 20__."

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600", AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN THE LAW OF ANOTHER STATE OR COUNTRY AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. VENUE FOR ANY DISPUTES RELATING TO THE ENFORCEMENT OF THIS LETTER OF CREDIT SHALL BE PALM BEACH COUNTY, FLORIDA.

{Name of Bank} _____

BY: _____
 {Name} _____
 {Title} _____

**SECTION 9
SAMPLE AGREEMENT FORMAT**

Below is the standard agreement format for this Request for Proposal. This is a sample agreement only and is subject to revisions. **PLEASE DO NOT COMPLETE.**

AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Delray Beach, a Florida municipal corporation ("City"), whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444, and - _____, a corporation (hereafter referred to as "Contractor"), whose address is _____.

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City's Request for Proposal No. 2023-069 and the Contractor's response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. INCORPORATION OF REQUEST FOR PROPOSAL

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Request for Proposal No. 2023-069 and the Contractor's response thereto, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City's Request for Proposal, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The City shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein, according to the terms and specifications of the referenced Request for Proposal.

ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the City: City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

- ii. with a copy to: City of Delray Beach
200 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

- iii. As to the Contractor: _____

Attn.: _____ Email: _____

b. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

ARTICLE 5. CONTRACT TERM

The Contract and Agreement shall be effective for _____() years as of the effective date of this Agreement, and shall expire on _____, _____.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter written.

CITY OF DELRAY BEACH, FLORIDA

[SEAL]

By: _____ Shelly
Petrolia, City Mayor

ATTEST:

By: _____ Katerri Johnson, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____ Lynn Gelin, City Attorney

CONTRACTOR

[SEAL]

By: _____

Printed Name

Title

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20___, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ___OR Produced Identification
Type of Identification Produced _____

Notary Public – State of Florida

EXHIBIT 10 GENERAL TERMS AND CONDITIONS

10.1 DEFINITIONS

- a. *Proposal:* any offer(s) submitted in response to this Request for Proposal.
- b. *Proposer:* person or firm submitting a response to this Request for Proposal.
- c. *Solicitation or Request for Proposal:* this Solicitation documentation, including any and all addenda.
- d. *Proposal Submittal forms:* describes the goods or services to be purchased and must be completed and submitted with the Proposal.
- e. *City:* shall refer to the City of Delray Beach, Florida.
- f. *Contract or Agreement:* Request for Proposal, all addenda issued thereto, all affidavits, the signed agreement, and all related documents that comprise the totality of the contract or agreement between the City and the Proposer.
- g. *Contractor:* selected Proposer that is awarded a contract to provide the goods or services to the City.
- h. *Purchasing Division:* Purchasing Division of the City of Delray Beach, Florida.
- i. *Responsible Proposer:* Proposer that has the capability in all respects to perform in full the contract requirements, as stated in the Request for Proposal, and the integrity and reliability that will assure good-faith performance.
- j. *Responsive Proposer:* Proposer whose Proposal conforms in all material respects to the terms and conditions included in the Request for Proposal.

10.2 CONE OF SILENCE

Pursuant to Section 2-355 of the Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all Solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the "Cone of Silence". This limits and requires documentation of communications between potential bidders and/or bidders on City

Solicitations, the City's professional staff, and the City Council members.

10.3 ADDENDUM

The Purchasing Division may issue an addendum in response to any inquiry received, prior to the due date for Proposals, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The Proposer should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the Solicitation document or in the addenda issued. Where there appears to be a conflict between the Solicitation and any addenda, the last addendum issued shall prevail. It is the Proposer's responsibility to ensure receipt of all addenda and any accompanying documentation. The Proposer is required to submit with its Proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

10.4 LEGAL REQUIREMENTS

This Solicitation is subject to all legal requirements contained in the applicable City Ordinances and Resolutions, as well as all applicable City, State, and Federal Statutes. Where conflict exists between this Solicitation and these legal requirements, the authority shall prevail in the following order: Federal, State, and local.

10.5 CHANGE OF PROPOSAL

Prior to the scheduled due date for Proposals, a Proposer may change its Proposal by submitting a new Proposal (as indicated on the cover page) with a letter on the firm's letterhead, signed by an authorized agent stating that the new Proposal replaces the original Proposal. The new submittal shall contain the letter and all information as required for submitting the original Proposal. No changes to a Proposal will be accepted after Proposals have been opened.

10.6 WITHDRAWAL OF PROPOSAL

A Proposal shall be irrevocable unless the Proposal is withdrawn as provided herein. Only a written letter received by the Purchasing Division prior to the due date for Proposals may withdraw a Proposal. A Proposal may also be withdrawn ninety (90) days after the Proposal has been opened and prior to award, by submitting a letter to the Purchasing and Contracts Director. The withdrawal letter

must be on company letterhead and signed by an authorized agent of the Proposer.

10.7 CONFLICTS WITHIN THE SOLICITATION

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Scope of Services, and/or Description of Items, the Proposal Submittal forms, or any addendum issued, the order of precedence shall be the last addendum issued, the Proposal Submittal forms, the Scope of Services and/or Description of Items, the Special Conditions, and then the General Terms and Conditions.

10.8 PROMPT PAYMENT TERMS

It is the policy of the City of Delray Beach that payment for all purchases by City departments shall be made in a timely manner. The City will pay the selected Proposer upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Florida Statutes, Section 218.74, the time at which payment shall be due from the City shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager or designee, not later than sixty (60) days after the date on which the proper invoice was received by the City.

10.9 DISCOUNTS (PROMPT PAYMENTS)

The Proposer may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the selected Proposer during the evaluation period. Proposers are requested to provide prompt payment terms in the space provided on the Proposal submittal forms signature page of the Solicitation.

10.10 PREPARATION OF PROPOSALS

- a. *The Proposal submittal forms define requirements of the services to be performed or the items to be purchased and must be completed and submitted with the Proposal. Use of any other forms will result in the rejection of the Proposal. The Proposal submittal forms must be legible. Proposers shall use typewriter, computer, or ink. All changes must be crossed out and initialed in ink. Failure to comply with these requirements may cause the Proposal to be rejected.*

- b. *An authorized agent of the Proposer's firm must sign the Proposal submittal forms where indicated. **Failure to sign the Signature Page of the Proposal shall render the Proposal non-responsive.***

- c. *The Proposer must identify any exceptions it takes to the terms and conditions of the Solicitation and contract. Exceptions will not automatically result in the Proposer being deemed non-responsive; however, such a determination is at the discretion of the City. Proposers are cautioned that they may be considered non-responsive if Proposals are conditioned to modifications, changes, or revisions to the terms and conditions of this Solicitation.*

- d. *The Proposer may submit alternate Proposal(s) for the same Solicitation provided that such offer is allowable under the terms and conditions. The alternate Proposal must meet or exceed the minimum requirements and be submitted as a separate Proposal marked "Alternate Proposal".*

- e. *When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.*

- f. *Late Proposals will not be accepted and will be returned to the sender unopened. It is the Proposer's responsibility to ensure timely delivery by the due date and time, and at the place stated in this Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.*

10.11 CANCELLATION OF SOLICITATION

The City of Delray Beach reserves the right to cancel, in whole or in part, any Requests for Proposals when it is in the best interest of the City.

10.12 AWARD OF CONTRACT

- a. *This contract may be awarded to the responsive and responsible Proposer meeting all requirements as set forth in the Solicitation. The City reserves the right to reject any and all Proposals, to waive irregularities or technicalities, and to re-advertise for all or any part of this Solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.*

- b. *The City reserves the right to reject any and all Proposals if it is determined that prices are*

excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.

- c. The Proposer's prior performance as a prime contractor or subcontractor on previous City contracts shall be taken into account in evaluating the Proposal received for this Solicitation.*
- d. The City will provide a copy of the ranking and scores to all Proposers responding to this Solicitation.*
- e. Award of this Proposal may be predicated on compliance with, and submittal of all required documents as stipulated in the Solicitation.*
- f. The City reserves the right to request and evaluate additional information from any Proposer after the due date for Proposals, as the City deems necessary.*

10.13 CONTRACT EXTENSION

The City reserves the right to automatically extend any agreement for a maximum period not to exceed one hundred eighty (180) calendar days in order to provide City departments with continual service and supplies while a new agreement is being solicited, evaluated, and/or successful.

10.14 WARRANTY

All warranties express and implied shall be made available to the City for goods and services covered by this Solicitation. All goods furnished shall be fully guaranteed by the selected Proposer against factory defects and workmanship. At no expense to the City, the selected Proposer shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty.

10.15 ESTIMATED QUANTITIES

Estimated quantities or dollars are for Proposer's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City may use these estimates to determine the selected Proposer. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for the given amount subsequent to the award of this contract.

10.16 NON-EXCLUSIVITY

It is the intent of the City to enter into an agreement with the selected Proposer that will satisfy its needs as described

herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to, award of other contracts, use of any contractor, or perform the work with its own employees.

10.17 CONTINUATION OF WORK

Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the selected Proposer, continue until completion at the same prices, terms, and conditions.

10.18 PROTEST

a. A recommendation for contract award or rejection of award may be protested by a Proposer. The Proposer may file a written protest with the City Clerk's office. The Proposer shall file its written protest with the City Clerk, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., excluding legal holidays. Protests shall contain the name, address, and phone number of the petitioner, name of the petitioner's representative (if any), and the title and Proposal number of the Solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest, and the action requested from the City.

b. The written protest must be received within three business days from the time of the initial posting of the intended award. Notice of Intent to Award shall be posted in Periscope S2G. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Proposer of all rights of protest under this procedure ([Purchasing Policies and Procedure Manual](#)).

c. The letter of protest shall be accompanied by a non-refundable protest application fee in an amount equal to one percent (1%) of the protestor's bid or five thousand dollars (\$5,000.00), whichever is less. The protest application fee must be a cashier's check, a certified check, or an attorney's trust account check made payable to the City of Delray Beach. Failure to provide the required protest application fee shall deem the protest as incomplete and invalid.

10.19 LAWS AND REGULATIONS

The selected Proposer shall comply with all laws and regulations applicable to provide the goods or services specified in this Solicitation. The Proposer shall be familiar with all federal, state, and local laws that may affect the

goods and/or services offered.

10.20 LICENSES, PERMITS AND FEES

The selected Proposer shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or a selected Proposer for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the selected Proposer.

10.21 SUBCONTRACTING

Unless otherwise specified in this Solicitation, the selected Proposer shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City shall constitute a material breach of the agreement and may result in termination of the contract for default.

10.22 ASSIGNMENT

The selected Proposer shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the City. Assignment without the prior consent of the City may result in termination of the contract for default.

10.23 SHIPPING TERMS

Unless otherwise specified in the Solicitation, prices quoted shall be F.O.B. Destination. Freight shall be included in the proposed price.

10.24 RESPONSIBILITIES AS EMPLOYER

The employee(s) of the selected Proposer shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments. The selected Proposer shall provide physically competent employee(s) capable of performing the work as required. The City may require the selected Proposer to remove any employee it deems unacceptable. All employees of the selected Proposer shall wear proper identification.

It is the selected Proposer's responsibility to ensure that all its employees and subcontractors comply with the employment regulations required by the US Department of Homeland Security. The City shall have no responsibility to

check or verify the legal immigration status of any employee of the selected Proposer.

10.25 INDEMNIFICATION

The selected Proposer shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the selected Proposer or its employees, agents, servants, partners, principals, or subcontractors. The selected Proposer shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The selected Proposer expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the selected Proposer shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

10.26 COLLUSION

A Proposer recommended for award as the result of a competitive Solicitation for any City purchase of supplies, materials, and services (including professional services, other than professional architectural, engineering, and other services subject to Sec. 287.055 Florida Stats.), purchase, lease, permit, concession, or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the City stating either that the contractor is not related to any of the other parties proposing in the competitive Solicitation or identifying all related parties; and attesting that the Proposal is genuine and not a sham or collusive or made in the interest or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other Proposer to put in a sham Proposal, or any other person, firm, or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other Proposer. In the event a recommended Proposer identifies related parties in the competitive Solicitation, its Proposal

shall be presumed to be collusive, and the recommended Proposer shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.

10.27 MODIFICATION OF CONTRACT

The contract may be modified by mutual consent, in writing, through the issuance of a modification to the contract, a supplemental agreement, purchase order, or change order, as appropriate.

10.28 TERMINATION FOR CONVENIENCE

The City, at its sole discretion, reserves the right to terminate any contract entered into pursuant to this Request for Proposal (RFP) with or without cause immediately upon providing written notice to the selected Proposer. Upon receipt of such notice, the selected Proposer shall not incur any additional costs under the contract. The City shall be liable only for reasonable costs incurred by the selected Proposer prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

10.29 TERMINATION FOR DEFAULT

The City reserves the right to terminate this contract, in part or in whole, or place the vendor on probation in the event the selected Proposer fails to perform in accordance with the terms and conditions stated herein by providing written notice of such failure or default and by specifying a reasonable time period within which the selected Proposer must cure any such failure to perform or default. If the selected Proposer fails to cure the default within the time specified, the City may then terminate the subject contract by providing written notice to the selected Proposer. The City further reserves the right to suspend or debar the selected Proposer in accordance with the appropriate City ordinances, resolutions, and/or policies. The vendor will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the incumbent Proposer.

9.30 FRAUD AND MISREPRESENTATION

Any individual, corporation, or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The City, as a further sanction, may terminate or cancel any other contracts with

such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

10.31 ACCESS AND AUDIT OF RECORDS

The City reserves the right to require the selected Proposer to submit to an audit by an auditor of the City's choosing at the selected Proposer's expense. The selected Proposer shall provide access to all of its records, which relate directly or indirectly to this contract, at its place of business during regular business hours. The selected Proposer shall retain all records pertaining to this contract, and upon request, make them available to the City for three (3) years following expiration of the contract. The selected Proposer agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

10.32 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 County programs, contracts, transactions, accounts and records. The Inspector General (IG) has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The Inspector General may, on a random basis, perform audits on all City contracts.

10.33 PRE-AWARD INSPECTION

The City may conduct a pre-award inspection of the Proposer's premises or hold a pre-award qualification hearing to determine if the Proposer is capable of performing the requirements of this Solicitation.

10.34 PROPRIETARY/CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of, Proposal submittals will be available for public inspection after the opening of Proposals in compliance with Chapter 119 of the Florida Statutes; popularly known as the "Public Record Law." The Proposer shall not submit any information in response to this Solicitation that Proposer considers a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection that would otherwise be available to the Proposer. In the event that the Proposer submits

information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Proposal as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the Proposal. The redaction or return of information pursuant to this clause may render a Proposal non-responsive.

10.35 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Any person or entity that performs or assists the City of Delray Beach with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA mandates for privacy, security, and electronic transfer standards include, but are not limited to:

- a. Use of information only for performing services required by the contract or as required by law.
- b. Use of appropriate safeguards to prevent non-permitted disclosures.
- c. Reporting to the City of Delray Beach any non-permitted use or disclosure.
- d. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Proposer and reasonable assurances that IIHI/PHI will be held confidential.
- e. Making Protected Health Information (PHI) available to the customer.
- f. Making PHI available to the customer for review and amendment, and incorporating any amendments requested by the customer.
- g. Making PHI available to the City of Delray Beach for an accounting of disclosures; and

- h. Making internal practices, books, and records related to PHI available to the City of Delray Beach for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records and/or electronic transfer of data). The selected Proposer must give its customers written notice of its privacy information practices, including specifically, a description of the types of uses and disclosures that would be made with protected health information.

10.36 ADDITIONAL FEES AND SURCHARGES

Unless provided for in the contract/agreement, the City will not make any additional payments such as fuel surcharges, demurrage fees, or delay-in-delivery charges.

10.37 COMPLIANCE WITH FEDERAL STANDARDS

All items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).

10.38 COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING

If the goods or services to be acquired under this Solicitation are to be purchased, in part or in whole, with Federal funding, it is hereby agreed and understood that Section 60-250.4, Section 60-250.5, and Section 60-741.4 of Title 41 of the United States Code, which addresses Affirmative Action requirements for disabled workers, is incorporated into this Solicitation and resultant contract by reference.

10.39 BINDING EFFECT

All of the terms and provisions of this contract/agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

10.40 SEVERABILITY

In the event any term or provision of any contract or agreement entered into pursuant to this Solicitation is found by a court of competent jurisdiction to be invalid, the remaining terms and provisions shall continue to be effective and shall be interpreted and given meaning to the greatest possible extent in the absence of any severed terms or

provisions.

10.41 GOVERNING LAW AND VENUE

This contract and all transactions contemplated by this agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.

10.42 ATTORNEY'S FEES

It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

10.43 EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

The City of Delray Beach complies with all laws prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority, and female-owned businesses to participate.

During the performance of this contract, the selected Proposer agrees it will not discriminate or permit discrimination in its hiring practices or in its performance of the contract. The selected Proposer shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the State of Florida, Palm Beach County, and the federal government.

The selected Proposer further acknowledges and agrees to provide the City with all information and documentation that may be requested by the City from time to time regarding the Solicitation, selection, treatment, and payment of subcontractors, suppliers, and Proposers in connection with this contract.

10.44 AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS

It is agreed and understood that any City department or agency may access this contract and purchase the goods or services successful herein. Each City department will issue a separate purchase order to the selected Proposer for the

department's specific purchases.

10.45 CRIMINAL HISTORY BACKGROUND CHECKS

Prior to hiring a contract employee or contracting with a Proposer, the City may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The contract employee or Proposer will be required to sign an authorization for the City to access criminal background information. The costs for the background checks shall be borne by the City.

10.46 LABOR, MATERIALS, AND EQUIPMENT

Unless specified elsewhere in the Solicitation or resultant contract, all labor, materials, and equipment required for the performance of the requirements of the contract shall be supplied by the selected Proposer.

10.47 MINIMUM WAGE REQUIREMENTS

The selected Proposer shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to this contract.

10.48 PACKING SLIP AND DELIVERY TICKET

A packing slip and/or delivery ticket shall accompany all items delivered to the City. The documents shall include information on the contract number or purchase order, any back-order items, and the number or quantity of items being delivered.

10.49 PURCHASE OF OTHER ITEMS

The City reserves the right to purchase other related goods or services, not listed in the Solicitation, during the contract term. When such requirements are identified, the City may request a price quote from the selected Proposer on the contract. The City, at its sole discretion, will determine if the prices offered are reasonable, and may choose to purchase the goods or services from the selected Proposer, another contract Proposer, or a non-contract Proposer.

10.50 PUBLIC RECORDS

Florida law provides that municipal records shall at all times be available to the public for inspection. Chapter 119, Florida Statutes, the Public Records Law, requires that all material submitted in connection with a Proposal response shall be deemed to be public record subject to public inspection upon award, recommendation for award, or

thirty (30) days after Proposal opening, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes. If the Proposer believes any of the information contained in his/her/its Proposal is considered confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and is exempt from the Public Records Law, then the Proposer must, in its response, specifically identify the material which is deemed to be exempt and state the legal authority for the exemption. All materials that qualify for exemption from Chapter 119, Florida Statutes or other applicable law must be submitted in a separate envelope, clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE" with the firm's name and the Proposal number clearly marked on the outside. The City will not accept Proposals when the entire Proposal is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.

The selected Proposer(s) shall keep and maintain public records and fully comply with the requirements set forth at Section 119.0701, Florida Statutes, as applicable; failure to do so shall constitute a material breach of any and all agreements awarded pursuant to this Solicitation.

10.51 CONFLICTS OF INTEREST

All Proposers must disclose with their Proposal the name of any officer, director, or agent who is also an employee of the City of Delray Beach. Further, all Proposers must disclose the name of any City employee who has any interest, financial or otherwise, direct or indirect, of five percent (5%) or more in the Proposers' firm or any of its branches. Failure to disclose any such affiliation will result in disqualification of the Proposer from this Solicitation and may be grounds for further disqualification from participating in any future Solicitations with the City.

10.52 PUBLIC ENTITY CRIMES

As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted Proposers 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 of real property to a public entity; may not be successful or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

10.53 OTHER GOVERNMENTAL AGENCIES

If a Proposer is successfully awarded a contract as a result of this Solicitation, the Proposer shall allow other governmental agencies to access this contract and purchase the goods and services under the terms and conditions at the prices awarded.

10.54 COMPLETION OF WORK AND DELIVERY

All work shall be performed, and all deliveries made in accordance with good commercial practice. The work schedule and completion dates shall be adhered to by the selected Proposer, except in such cases where the completion date will be delayed due to acts of nature, force majeure, strikes, or other causes beyond the control of the selected Proposer. In these cases, the selected Proposer shall notify the City of the delays in advance of the original completion so that a revised delivery schedule can be appropriately considered by the City.

10.55 FAILURE TO DELIVER OR COMPLETE WORK

Should the selected Proposer fail to deliver or complete the work within the time stated in the contract, it is hereby agreed and understood that the City reserves the authority to cancel the contract with the selected Proposer and secure the services of another Proposer to purchase the items or complete the work. If the City exercises this authority, the City shall be responsible for reimbursing the selected Proposer for work that was completed and items delivered and accepted by the City in accordance with the contract specifications. The City may, at its option, demand payment from the selected Proposer, through an invoice or credit memo, for any additional costs over and beyond the original contract price that were incurred by the City as a result of having to secure the services of another Proposer.

10.56 CORRECTING DEFECTS

The selected Proposer shall be responsible for promptly correcting any deficiency, at no cost to the City, within three (3) calendar days after the City notifies the selected Proposer of such deficiency in writing. If the selected Proposer fails to correct the defect, the City may (a) place the selected Proposer in default of its contract; and/or (b) procure the products or services from another source and charge the selected Proposer for any additional costs that are incurred

by the City for this work or items, either through a credit memorandum or through invoicing.

10.57 ACCIDENT PREVENTION AND BARRICADES

Precautions shall be exercised at all times for the protection of persons and property. All selected Proposers performing services or delivering goods under this contract shall conform to all relevant OSHA, State, and County regulations during the course of such effort. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the selected Proposer. Barricades shall be provided by the selected Proposer when work is performed in areas traversed by persons, or when deemed necessary by the City.

10.58 OMISSIONS IN SPECIFICATIONS

The scope of services or description of items contained within this Solicitation describes the various functions and classes of work required as necessary for the completion of the project. Any omissions of inherent technical functions or classes of work within the specifications and/or statement of work shall not relieve the Proposer from furnishing, installing, or performing such work where required to the satisfactory completion of the project.

10.59 MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

The selected Proposer hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the selected Proposer in conjunction with this Solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the City by the selected Proposer are found to be defective or do not conform to specifications, (1) the materials may be returned to the selected Proposer at the Proposer's expense and the contract cancelled; or (2) the City may require the selected Proposer to replace the materials at the selected Proposer's expense.

10.60 TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS

The Federal "Right to Know" Regulation implemented by the Occupational Safety and Health Administration (OSHA) requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace.

Accordingly, the selected Proposer performing under this contract is required to provide two (2) complete sets of Material Safety Data Sheets to each City department utilizing any products that are subject to these regulations. This information shall be provided at the time when the initial delivery is made, on a department-by-department basis.

10.61 TAXES

The City of Delray Beach is exempt from Federal and State taxes for tangible personal property.

10.62 PROPOSER'S COSTS

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

10.63 SUBSTITUTION OF PERSONNEL

It is the intention of the City that the selected Proposer's personnel proposed for the contract shall be available for the initial contract term. In the event the selected Proposer wishes to substitute personnel, the selected Proposer shall propose personnel of equal or higher qualifications, and all replacement personnel are subject to the City's approval. In the event the 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 contract for cause.

10.64 FORCE MAJEURE

The City and the selected Proposer are excused from the performance of their respective obligations under the contract 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, natural disasters, 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.*
- 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 selected Proposer shall not constitute a force majeure. The term of the contract shall be extended by a period equal to that during which either party's performance is suspended under this section.

10.65 NOTICES

Notices shall be effective when received at the addresses specified in the contract/agreement. Changes in respective addresses to which such notices are to be directed may be made from time to time by either party by written notice to the other party. Facsimile and email transmissions are acceptable notice effective when received; however, facsimile and email transmissions received after 5:00 p.m. or on weekends or holidays will be deemed received on the next

business day. The original of the notice must also be mailed to the receiving party.

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the selected Proposer and the City of Delray Beach.

10.66 POOL CONTRACTS

During the term of contracts and agreements that are executed as vendor pools, awarding vendors in prequalified pools of vendors, either as a general pool or by categories, sub-categories, or groups, the City reserves the right to add new vendors to these contracts for goods or services not awarded for the original Solicitation or as part of the general pool category, sub-category or group. To be eligible to be added to these pool contracts, a vendor must meet the same eligibility requirements established in the original Invitation to Bid.

10.67 FISCAL FUNDING OUT

The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement. A non-appropriation event shall not constitute a default or breach of said contract or agreement by the City.

END OF SECTION 10

**SECTION 11
SOLICITATION SUMMARY**

The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING DIVISION

SOLICITATION SUMMARY

IMPORTANT NOTICE

The information you provide on this page will be read aloud at the PUBLIC OPENING for this solicitation. It is VERY IMPORTANT that the summary information you provide below is exactly the same information contained in your Proposal. If subsequent to the opening of Proposals, the City determines that the information contained in the electronic version of your Proposal is different from the information on this solicitation Summary, the City reserves the right to deem your Proposal NON-RESPONSIVE and remove your Proposal from further evaluation and consideration for contract award.

PROPOSAL INFORMATION

Proposal Number: RFP 2023-069

Title: Beach Equipment Rental Concession Services

Due Date and Time: November 8, 2023, 2:00 P.M., ET

Name of Proposer: _____

Address: _____

Contact Person: _____

Authorized Signature: _____

Date: _____

By signing and submitting this solicitation Summary, the Proposer affirms that the information provided above is an exact and correct summary of the information contained in the electronic version of the Proposer's Proposal to the City of Delray Beach.

THIS SOLICITATION SUMMARY MUST BE SIGNED AND INCLUDED AS AN ELECTRONIC COPY IN THE PROPOSAL.