



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

RFP No. 2017-028
HVAC REPAIRS AND PREVENTIVE MAINTENANCE
SERVICES (941-55)

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

**RFP No. 2017-028
HVAC Repair and Preventive Maintenance Services**

Summary

ISSUE DATE: January 11, 2017

DEPARTMENT: Environmental Services

DUE DATE: February 15, 2017

TIME: 2:00 p.m., ET

The City of Delray Beach, Florida is soliciting proposals for the provision of HVAC repair, installation and preventive maintenance services as identified in the Scope of Services herein. Any Proposer wishing to submit a proposal must comply with the requirements contained in this Request for Proposals (RFP).

A Non-Mandatory Pre-proposal conference is scheduled for January 20, 2017 at 10:00 a.m. ET in the City of Delray Beach (City) City Hall Building, 1st Floor Conference Room, 100 N.W. 1st Avenue, Delray Beach, FL. Interested parties are encouraged to attend to obtain additional information about the solicitation process and ask questions for clarification of the requirements.

1. **NOTIFICATION:** The City utilizes the following methods for notification and distribution of solicitation opportunities:

- Bidsync – www.bidsync.com
- Purchasing webpage on the City of Delray Beach [website](#)
- Request via email purchasing@mydelraybeach.com
- Hard copies are available at City Hall

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

2. **REQUIRED INFORMATION:** This RFP contain various sections which require completion. Responses to this RFP (Proposals) must be completed and returned prior to the Due Date and Time set for Proposal opening or the Proposer will be found non-responsive.
3. **CORRESPONDENCE:** The number of this RFP must appear on all correspondence, or inquiries, pertaining to this RFP.
4. **NOTICE OF PUBLIC DOCUMENTS:** Any and all materials initially or subsequently submitted as part of the solicitation process for this RFP shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.
5. **ADDENDA:** Any interpretations, corrections, or changes to this RFP will be made by addenda. Sole issuing authority shall be vested in the City Purchasing Department. Addenda will be posted and available through the City notification methods shown above.

6. **ELECTRONIC PROPOSAL SUBMISSION:** Submission of Proposals electronically will be through a secure mailbox at BidSync (www.bidsync.com) until the Due Date and Time as indicated in this RFQ. BidSync does not accept electronic Proposals after the Due Date and Time. It is the sole responsibility of the Proposer to ensure their proposal reaches BidSync before the solicitation Due Date and Time. There is no cost to the Proposer to submit a proposal to a City via BidSync. Electronic submission of proposals may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate file.
- **Additionally, Proposers who submit a proposal electronically via BidSync shall deliver two electronic format copies of the proposal to the City in a sealed container per Item 8 below.**
7. **HARD COPY (PAPER) PROPOSAL SUBMISSION:** Paper hard copies of Proposer's proposal may be submitted as an alternative method. The proposal and all copies must be received on or before the Due Date and Time (local time) at the City Hall Lobby reception desk located at 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. Proposals must be presented in a sealed container unless otherwise indicated.

It is the sole responsibility of the Proposer to utilize the forms provided in this RFP and to ensure their Proposal is delivered to the City Hall Lobby reception desk prior to the Due Date and Time. The Proposer's name, return address, the RFP number, RFP title, Due Date and Time must be noted on the outside of the sealed container. Included in the sealed container shall be:

- One (1) unbound original clearly identifying Proposer and marked "ORIGINAL".
 - Six (6) bound copies clearly identifying Proposer and marked "COPY" with all required information and identical to the original.
 - Two (2) electronic format copies clearly identifying Proposer.
8. **ELECTRONIC FORMAT COPIES:** Electronic format copies should be submitted on separate USB portable flash memory cards/drives in Adobe Acrobat® portable document format (PDF) in one continuous file. Do not password-protect or otherwise encrypt electronic proposal copies. Electronic copies must contain an identical proposal to the original. Electronic copies must be received on or before the Due Date and Time (local time) at the City of Delray Beach; City Hall Lobby reception desk located at 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. Electronic format copies must clearly identify Proposer and be submitted in a sealed container.

NOTE: Proposal responses submitted via facsimile or email will not be accepted.

9. **LATE PROPOSALS:** The City shall not be responsible for a Proposer's inability to submit a proposal via BidSync by the Due Date and Time for any reason. Hard copy proposals received at the City of Delray Beach City Hall after the Due Date and Time shall be returned unopened and will be considered non-responsive. It is the sole responsibility of Proposer to ensure its Proposal is received by the City by the Due Date and Time. The City is not responsible for the lateness due to weather conditions, delivery service, issues arising from the use of BidSync, or any other reasons. City business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding City holidays.

10. **PROPOSAL OPENINGS:** All proposals submitted before the Due Date and Time shall be publicly opened by the Purchasing Department at the City Hall Building, located at 100 N.W. 1st Avenue, Delray Beach, FL or other designated City location as posted. The Purchasing Department will decrypt responses received in BidSync immediately following the designated Due Date and Time. Proposers and the public are invited to attend Proposal openings. Only the Proposers' names will be read aloud at the Proposal opening.
11. **MINOR DEFECT:** The City reserves the right to waive any minor defect, irregularity, or informality in any proposal. The City may also reject any or all proposals without cause prior to award.
12. **EVALUATION:** Proposals will be evaluated as outlined in this RFP.
13. **AWARD:** The City reserves the right to accept any proposal or combination of proposal alternates which, in the City's judgment will best serve the City's interest, reject any and all proposals or any part of a proposal, and to negotiate terms with the Successful Proposer. The City reserves the right to waive any informality in a proposal, and to award the purchase in the best interest of the City. Discrepancies in the multiplication of units of work and unit prices in Proposer's Fee Proposal
14. will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- The City reserves the right to award the Agreement on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City.
- The City reserves the right to make an award to the responsive and responsible Proposer whose product or service meets the terms, conditions, and specifications of the RFP and whose Proposal is considered to best serve the City's interest.
15. **INFORMATION:** Within this RFP are several Sections. Section 1 provides the scope of services, Section 2 describes the Terms and Conditions that will apply to this RFP and any resulting Agreement. Section 3 describes the Proposal Response Requirements to be provided by the Successful Proposer. Section 4 provides the scope of work and Section 4 provides forms and instructions for preparing a proposal in response to this RFP.
16. **RFP SCHEDULE:** A summary schedule of the major activities associated with this solicitation is presented in Table 1, below. The City, at its sole discretion, may modify this schedule as the City deems appropriate.

Table 1

ACTIVITY	DATE
Issue RFP	January 11, 2017
Non-Mandatory Pre-proposal Conference City Hall – Conference Room	January 20, 2017 at 10:00 a.m. ET
Deadline for Delivery of Questions	January 26, 2017
Due Date and Time (for delivery of Proposals)	February 15, 2017 by 2:00 p.m., ET
Institute Cone of Silence	February 15, 2017 at 2:00 p.m., ET
Phase 1, Evaluation	February 28, 2017
Phase 2, Selection Committee – Technical Evaluations. ESD Training Room	March 9, 2017 at 1:00 p.m., ET

Selection Committee Meeting – Interviews (if conducted. ESD Training Room	March 14, 2017 at 1:00 p.m. ET
Selection Committee Meeting - Final Evaluations ESD Training Room	March 17, 2017 at 9:00 a.m. ET

17. MEETING LOCATIONS:

- **City Hall Conference Room** - located at 100 N.W. 1st Avenue, first floor, Delray Beach, FL.
- **ESD Training Room** - located at Environmental Services Department Administration Building located at 434 South Swinton Avenue, Delray Beach, FL.

18. BIDSYNC: The City uses BidSync (www.bidsync.com) to administer the competitive solicitation process, including but not limited to soliciting proposals, issuing addenda, posting results and issuing notification of an intended award decision. There is no charge to potential Proposers to register and download the solicitation from BidSync. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available on the BidSync website well in advance of their intention of submitting a proposal to ensure familiarity with the use of BidSync.

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

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

Failure of the Proposer to examine all pertinent documents shall not entitle the Proposer to any relief from the conditions imposed in the Agreement.

21. DEFINITIONS The City will use the following definitions in its special conditions, scope of services, instructions, addenda and any other document used in the solicitation process:

- A. REQUEST FOR PROPOSALS (RFP) - City request for proposals from qualified Proposers.
- B. PROPOSER – Person or firm submitting a Proposal.
- C. PROPOSAL – Proposers response to this RFP.
- D. RESPONSIVE PROPOSER – A Proposer whose Proposal conforms in all material respects.
- E. RESPONSIBLE PROPOSER – A Proposer who meets the minimum qualification requirements and has the capability to perform the Agreement requirements.

- F. FIRST RANKED PROPOSER – The Proposer whose Proposal is deemed the most advantageous to the City after applying the evaluation criteria contained in this RFP.
- G. SUCCESSFUL PROPOSER – Proposer who is awarded an Agreement for the provision of services detailed in this RFP.
- H. AGREEMENT – The Agreement, a sample of which is attached hereto and made a part hereof, between the City and the Successful Proposer to perform the services described herein.

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SECTION 1: SPECIAL TERMS AND CONDITIONS

1. Sections

Within this RFP are several Sections. Section 1 describes the Terms and Conditions that will apply to this RFP. Section 2 describes the information and documentation to be provided by Proposers, Section 3 provides the Scope of Work that will be required of the Successful Proposer, and Section 4 provides forms that must be submitted and instructions for preparing a proposal in response to this RFP.

2. Addenda, Changes, and Interpretations

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

The City's response to questions and requests for information will be answered within the question/answer feature provided by BidSync. Additionally, all questions received and responses given will be provided via an addendum to this RFP and uploaded to BidSync. Material changes, if any, to the requirements, scope, specifications, or the solicitation process will be made by official written addendum issued by the City and uploaded to BidSync as an addendum to this RFP.

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

3. Evaluation of Proposals

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

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

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

Evaluation Criteria

Criterion	Max Score
Experience	35
Capacity & Approach	25
Fee Proposal	25
Interviews (if conducted)	10
Location	5
Total	100

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

The Selection Committee may final rank Proposals without conducting interviews with Proposers. Therefore, each Proposer must ensure that its proposal contains all of the information requested in this RFP and reflects Proposer's best offer.

If interviews are conducted, the evaluation will be on the knowledge demonstrated by the Proposer and its team members, as well as the team's ideas and vision for services for the City. Consideration will be given for unqualified answers, comprehensive explanations of relevant experience, and understanding of the required services. Consideration will also be given for presentation style. Clarification information as well as information obtained during the interview process will be considered in the final evaluations and ranking of Proposals.

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

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

4. **Best and Final Offer (BAFO)**

The City may request a BAFO if additional information or modified terms are necessary for the evaluation committee to complete its evaluation and ranking. The information received from the BAFO will be used by the evaluation committee to re-evaluate and re-rank the Proposers.

5. **Negotiation**

The City reserves the right to negotiate pricing and scope with the highest ranked Proposer(s).

6. **Award**

The City reserves the right to accept a Proposal(s) and award an Agreement(s) that, in its judgment, is the best value and in the best interest of the City.

7. The City's Acceptance or Rejection of Proposals

The City reserves the right to:

- Disregard all non-conforming or unbalanced proposals
- Reject any and all proposals that fail to satisfy the requirements and specifications in this RFP
- Accept the proposal which is the best overall proposal, based on the selection criteria listed
- Waive minor irregularities in any proposal
- Issue addenda or otherwise revise the requirements in this RFP
- Reject all proposals, with or without cause
- Issue requests for new proposals
- The City concludes that collusion existed among two or more Proposers
- Cancel this RFP

Additionally, the City may reject a proposal(s) if (1) the Proposer misstates or conceals any material fact in their proposal; (2) the proposal does not conform to the requirements of applicable Law; (3) the proposal is subject to conditions or qualifications; (4) a change occurs that makes this RFP unnecessary for the City; (5) any Proposer submits more than one proposal under the same or different names; (6) a Proposer has failed to perform satisfactorily or meet its financial obligations on previous contracts; (7) the Proposer employs unauthorized aliens in violation of Section 274(A)(e) of the Immigration and Naturalization Act; (8) the Proposer is listed on the U.S. Comptroller General's List of Ineligible Companies for Federally Financed or Assisted Projects (9) If two or more Proposers are planning a merger, or in the process of merging with or acquiring other Proposers, and/or (10) the City concludes that the Proposer is not submitting bona fide or uncompromised proposal.

8. Changes and Alterations

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

9. Proposer's Costs

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

10. Pricing/Delivery

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

Proposer must quote firm, fixed hourly fees for all services stated in the RFP and a firm fixed mark-up percentage for materials. Fees stated in the Fee Proposal must include all installation, travel and expenses and, as applicable for parts and materials, must be quoted FOB: Destination.

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

11. Invoices/Payment

The City will accept invoices no more frequently than once per month. Each invoice shall fully detail the related fees and shall specify the status of the particular task or project as of the date of the invoice with regard to the accepted schedule for that task or project. Payment will be made within forty-five (45) days after receipt of an invoice acceptable to the City, in accordance with the Florida Local Government Prompt Payment Act. If, at any time during the Agreement, the City shall not approve or accept the Proposer's work product, and agreement cannot be reached between the City and the Proposer to resolve the problem to the City's satisfaction, the City shall negotiate with the Proposer on a payment for the work completed and usable to the City.

12. Acceptance of Proposals / Minor Irregularities

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

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

13. Modification of Services

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

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

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

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

14. Non Exclusive Contract

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

15. Contract Agreement

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

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

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

16. Subcontractors

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

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

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

17. Insurance Requirements

The Successful Proposer shall supply proof of insurance, detailing terms and provisions of coverage. Coverage must be received by the Purchasing Department and approved by the City Risk Manager within 10 days of final execution of the Agreement.

Successful Proposer shall carry the following minimum types of insurance:

- A. Workers' Compensation Insurance: with the statutory limits.
- B. Employers' Liability insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.

- C. Comprehensive General Liability Insurance: with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage.

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

- D. Motor Vehicle Liability Insurance: with limits of not less than \$1,000,000 per occurrence covering all vehicles associated with Proposer's operations to include all owned, non-owned and hired vehicles.

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- VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

18. Award of Agreement

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

19. Unauthorized Work

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

20. Uncontrollable Circumstances (Force Majeure)

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

- A. The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the

occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

- B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
- D. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Proposer will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

21. News Releases/Publicity

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

22. Agreement Period

The Agreement will be in effect upon final execution of the Agreement by the City of Delray Beach. The term of the Agreement shall be for a two-year period through May 31, 2019 with three, one-year options to renew. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

At the City's request, the Successful Proposer shall continue services beyond the final expiration date as approved by the City Manager or Commission. Such extension shall not exceed a six month period. The Successful Proposer shall be compensated at the rate in effect when this extension period is invoked by the City.

23. Agreement Coordinator

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

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

24. Substitution of Personnel

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

25. Public Records

IF THE SUCCESSFUL PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUCCESSFUL PROPOSER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT PUBLICRECORDSREQUEST@MYDELRAYBEACH.COM.

Successful Proposer shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City 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 Florida Statute or as otherwise provided by law.
- iii. 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 Agreement term and following completion of the Agreement if the Successful Proposer does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Successful Proposer or keep and maintain public records required by the City to perform the service. If the Successful Proposer transfers all public records to the City upon completion of the Agreement, the Successful Proposer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Successful Proposer keeps and maintains public records upon completion of the Agreement, the Successful Proposer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Successful Proposer does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

26. Request for Records, Non-compliance:

All requests to inspect or copy public records relating to a City Agreement for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Successful Proposer of the request, and the Successful Proposer must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

If Successful Proposer does not comply with the City's records request for records, the City shall enforce the Agreement provisions in accordance with the Agreement. If Successful

Proposer fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statute Chapter 119.10.

If a civil action is filed against Successful Proposer to compel production of public records relating to a City Agreement for services, the court shall assess and award against the Successful Proposer the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the Successful Proposer unlawfully refused to comply with the public records request within a reasonable time; and
2. At least eight business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Successful Proposer has not complied with the request, to the public agency and to the contractor. A notice complies if it is sent to the City's custodian of public records and to the Successful Proposer at the Successful Proposer's address listed on its Agreement with the City or to the Successful Proposer's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format. A Successful Proposer who complies with a public records request within eight business days after the notice is sent is not liable for the reasonable costs of enforcement.

27. Limitations on Communication-Cone of Silence:

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

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

- A. 'Cone of Silence' means a prohibition on any communication, except for written correspondence, regarding a particular request for proposals, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitations; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular Agreement.
- B. For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- C. The Cone of Silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The Cone of Silence applies to any person or person's representative who responds to a particular request for proposals, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by

the person or person's representative. Each request for proposals, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.

- D. The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, Bidder negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the Cone of Silence shall not apply to Bidder negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- E. The Cone of Silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.
- F. The Cone of Silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves an Agreement, rejects all Bids or responses, or otherwise takes action which ends the solicitation process.
- G. Any Agreement entered into in violation of the Cone of Silence provisions in this section shall render the transaction voidable.

28. Office of the Inspector General:

Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed city contracts, transactions, accounts and records. The City has entered into an Inter-local Agreement with Palm Beach County for Inspector General services. This agreement provides for the Inspector General to provide services to the City in accordance with the City functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the City and receiving City funds shall fully cooperate with the Inspector General, including providing access to records relating to the Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the parties doing business with the City, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud.

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

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

30. Public Entity Crimes:

Pursuant to Florida Statutes 287.133, as amended, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on an Agreement to provide any goods or services to a public entity, may not submit a proposal on an Agreement with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as an Agreement or, supplier, subcontractor or consultant under an Agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Each Proposer must certify that the Proposer is not subject to these prohibitions regarding public entity crimes.

31. Scrutinized Companies:

This Section applies to any Agreement for goods or services of \$1 million or more. The Proposer certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, that it does not have business operations in Cuba or Syria and t as provided in Florida Statutes 287.135. The City may terminate an Agreement at the City' s option if the Proposer is found to have submitted a false certification as provided under subsection (5) of Florida Statutes 287.135 or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has engaged in business operations in Cuba or Syria, as defined in Florida Statutes 287.135.

32. Debarred or Suspended Proposers:

The Proposer certifies, by submission of a Proposal response to this solicitation, that neither it nor its principals or subcontractors are presently debarred or suspended by any Federal, State or City department or agency.

33. Lobbying Activities:

All Proposers are advised that the Palm Beach County Lobbyist Registration Ordinance (Section 2 - 351 of the Palm Beach County Code of Ordinances) applies to the City and this solicitation. Any violation of this requirement may cause the Proposer to be disqualified and prohibited from participating further in the RFP process.

34. Compliance with Laws:

Proposer shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant any order.

35. Non-Discrimination:

The Proposer shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The Proposer will endeavor to ensure that applicants are employed and that employees are treated fairly during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

These provisions apply to all subcontractors and it is the responsibility of the subcontractor to be in compliance.

36. Conflict of Interest:

By submitting a Proposal, Proposer declares and certifies that no officer, employee or person whose salary is payable in whole or part from the City is directly or indirectly interested in this Proposal or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; or

The award is subject to provisions of State Statutes and City Ordinances. All Proposers must disclose with their Proposal the name of any officer, director or agent who is also an employee of the City. Further, all Proposers must disclose the name of any City employee who owns, directly or indirectly, any interest in the Proposer's firm or any of its' branches.

37. Anti-Collusion:

Proposer certifies that its Proposal is made without prior understanding, agreement, or connection with any other corporation, firm or person submitting a Proposal for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

Any such violation may result in Agreement cancellation, return of materials or discontinuation of services and the possible removal of Proposer from participation in future City solicitations for a specified period.

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

38. City Policies:

Successful Proposer shall comply with the City Equal Employment Opportunity Policy, Violence in the Workplace Policy, Drug and Alcohol Free Workplace Policy, General Complaint Policy and Sexual Harassment Policy. Copies of these policies may be obtained from the City Human Resources Division. Violations of these policies may result in cancellation/termination of the Agreement.

39. Trade Secret:

Any language contained in the Proposer's Proposal purporting to require confidentiality of any portion of the Proposal, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 (Public Records Laws), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's Proposal constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City its officers, employees, volunteers, 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. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

40. Local Preference:

In accordance with the City Code of Ordinances Sec. 36.14, the City shall give preference to a Local Business. For all acquisitions made pursuant to Requests for Proposals, Requests for Qualifications or Requests for Letters of Interest, the solicitation shall include a weighted criterion for local businesses of five (5) percentage points of the total points in the evaluation criteria published in the solicitation.

A Local Business is any person, firm, partnership, company or corporation authorized to do business in Florida that has a valid business tax receipt issued by the City for at least one year prior to the solicitation issue date and a physical address within the City from which the vendor lawfully performs and operates.

41. Venue:

Proposers waive the privilege of venue and agree that any legal action brought pursuant to this RFP or any resulting Agreement between Proposer and the City will be in Palm Beach County, Florida and that all litigation between Proposer and the City in the federal courts shall take place in the U.S. District Court for the Southern District of Florida.

Proposer hereby waives any claim against City and its officers, employees, volunteers or agents for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of the Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring the Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

42. Indemnity/Hold Harmless Agreement:

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

43. Specifications:

The specifications contained in the Scope of Services may include items that are considered minimum, mandatory, or required. If any Proposer is unable to meet or exceed these items and feels that the specifications are overly restrictive, the Proposer must notify the Purchasing Department prior to the Deadline for Delivery of Written Questions. If no such notification is received prior to the Deadline for Delivery of Written Questions, the City will consider the specifications to be acceptable to all Proposers.

44. Protest Procedures:

Parties that are not actual proposers including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made pursuant to this Section.

Upon notification by the City that a proposer is deemed non-responsive and/or non-responsible, the proposer or responder who is deemed non-responsive and/or non-responsible may file a protest with the Chief Purchasing Officer by close of business on the third business day after notification (excluding the day of notification) or any right to protest is forfeited.

Likewise, after a Notice of Intent to Award an Agreement is posted, any actual proposer who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the Chief Purchasing Officer by close of business on the third business day after posting (excluding the day of posting) or any right to protest is forfeited.

Any proposer filing a protest shall simultaneously provide a Protest Bond to the City in the amount of fifteen thousand dollars (\$15,000). If the protest is decided in the protester's favor, the entire Protest Bond shall be returned to the protester. If the protest is not decided in the protester's favor, the Protest Bond shall be forfeited to the City. The Protest Bond shall be in the form of a cashier's check, and shall be in the amount specified in the Sealed Competitive Method documents.

Any actual proposer that does not formally protest or appeal in accordance with this City Code Ordinance 36.04 shall not have standing to protest the City Commission's award.

Proposal protests will follow the procedures set forth in City Code Ordinance 36.04.

45. Items With Recycled Content:

In addressing environmental concerns, the City encourages Proposers to submit a Proposal or, if requested an alternate proposal, containing items and/or the use of items with recycled content. When submitting a Proposal with recycled content items, Proposer shall provide documentation to the City to support their claim of the recycled content. The City prefers packaging consisting of materials that are degradable or that are able to be recycled. When specifically stated in the RFP, the City may give preference to proposals containing items and/or the use of items manufactured with recycled material or packaging that is recyclable.

46. Use of Other Governmental Agreements:

The City reserves the right to reject any part or all of any proposal received and utilize other available governmental agreements, if such action is in its best interest.

The successful Proposer agrees to make available to all governmental agencies, authorities, departments, and municipalities the prices submitted with the selected proposal should any governmental agency, authority, department, and municipality (collectively referred to as Public Entities) desire to buy under the selected proposal.

The City will not be responsible for any transactions between the Successful Proposer and Public Entities that may elect to utilize the awarded proposal. All terms, prices and conditions of the awarded proposal will apply between the Successful Proposer and Public Entities utilizing the awarded proposal. As a condition of using the awarded proposal, the Public Entity and successful Proposer shall hold the City harmless from any claims or legal actions that may arise. NOTE: Any quantities estimated in this RFP are for the City only.

47. Prohibition of Interest:

No Agreement will be awarded to a Proposer who has City elected officials, officers or employees affiliated with it, unless the Proposer has fully complied with current Florida State Statutes, City Ordinances, the Palm Beach County Code of Ethics, and all other applicable rules and regulations relating to this issue. Proposers must disclose any such affiliation in their Proposal. Failure to disclose any such affiliation will result in disqualification of the Proposer, removal of the Proposer from the City's Proposer lists, and prohibition of the Proposer from engaging in any business with the City for a specified period.

48. Legal Requirements:

Applicable provisions of all federal, State of Florida, and Palm Beach County laws, local ordinances, rules and regulations shall govern development, submittal and evaluation of Proposals submitted in response to this RFP and shall govern any and all claims and disputes which may arise between Proposers and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Proposer shall not constitute a cognizable defense against the legal effect thereof.

49. Payment Terms and Cash Discounts:

Payment terms, unless otherwise stated in this RFP, will be considered to be net 30 days after the date of receipt of a correct invoice by the City Finance Department. Proposer may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Proposer offers a discount, it is understood that the discount time will be computed from the date of receipt of correct invoice by the City Finance Department.

50. Proposal Firm for Acceptance:

Proposer warrants that by virtue of submitting a Proposal, the Proposal and the prices quoted in the Proposal will be firm for acceptance by the City for a period of one hundred fifty days from the Due Date and Time.

51. Communications:

Only written communications from Proposer, which are signed by a person authorized to bind the Proposer will be recognized by the City as duly authorized expressions on behalf of Proposer.

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SECTION 2: PROPOSAL RESPONSE REQUIREMENTS

1. HISTORY AND BACKGROUND

The City currently has approximately 40 different departments located throughout Delray Beach. In January 2014, the City awarded an Agreement for Air Conditioning Service, Repairs and Preventative Maintenance to Atlantic Refrigeration, Inc. This Agreement expired on October 1, 2016.

2. PROPOSER STATEMENT OF ORGANIZATION

Provide information on Proposer as follows:

- A. Legal contracting name including any dba.
- B. State of organization or incorporation.
- C. Ownership structure of Proposer's company.
(e.g., Sole Proprietorship, Partnership, Limited Liability Corporation, Corporation)
- D. Federal Identification Number.
- E. Contact information for Proposer's Corporate headquarters.
Address
City, State, Zip
Phone
- F. Contact information for Proposer's Local office (if any).
Address
City, State, Zip
Phone
- G. Years in business
- H. List of officers, owners and/or partners, or managers of the firm. Include names, addresses, email addresses, and phone numbers
- I. Any additional organizational information that Proposer wishes to supply to augment its proposal
- J. Contact information for Proposer's Primary representative during this RFP process.
Name
Phone
E-mail
Mailing Address
City, State, Zip

K. Contact information for Proposer's Secondary representative during this RFP process.

Name
Phone
E-mail
Mailing Address
City, State, Zip

L. Briefly summarize any current or pending litigation in which Proposer is a part to.

M. 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).

3. MINIMUM QUALIFICATIONS

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

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

No documentation is required. The City will verify registration.

- ii. Proposer must have been in business for a minimum of five years prior to the Due Date and Time.

Provide supporting documentation (e.g. state, county, city business license; occupational license) that confirms Proposer has been in business for a minimum of five years prior to the Due Date and Time.

- iii. Proposer must have a valid Florida Department of Business & Professional Regulation (DBPR), Construction Industry Licensing Board, Class A, Certified Air Conditioning Contractor license to perform HVAC work within the State of Florida.

Submit a copy of Proposer's Florida DBPR Class A, Certified Air Conditioning Contractor license.

- iv. Must have a minimum of six (6) full-time employees, excluding the employee who has a Class A Certified Air Conditioning Contractor license, who each have a minimum of three years of experience as an HVAC Mechanic, Air Conditioning Technician and/or Refrigeration Technician.

Submit the following information for each of the three qualifying full-time employees who have a minimum of three years of experience as an HVAC Mechanic, Air Conditioning Technician and/or Refrigeration Technician:

- Full Name
- Job Title
- Work history that indicates the three years of experience as an HVAC Mechanic, Air Conditioning Technician and/or Refrigeration Technician
- Any applicable training certifications or licenses that verifies the required experience

4. PROPOSAL RESPONSE REQUIREMENTS

A. EXPERIENCE

- i. Submit a detailed narrative description documenting Proposer's overall background and experience to include, but not limited to, the following:
 - i. Summary of Proposer's experience to include years in business and general experience in HVAC repair, installation and preventive maintenance services.
 - ii. Summary of Proposer's experience in commercial HVAC repair, installation, and preventative maintenance services.
 - iii. Details experience in providing HVAC services for other municipalities or government entities, including those in Florida and those in Palm Beach County.
 - iv. Describe or provide examples of a minimum of two previous commercial HVAC installation projects that Proposer completed in the past three years that demonstrate Proposer's experience in this area.
 - v. Describe or provide examples of a minimum of two previous commercial HVAC repair projects that Proposer completed in the past three years that demonstrates Proposer's experience in this area.
 - vi. Describe or provide examples of a minimum of two previous commercial HVAC preventive maintenance service projects that Proposer completed in the past three years that demonstrates Proposer's experience in this area.
 - vii. Submit a narrative of Proposer's experience in providing emergency commercial HVAC repairs
 - viii. Detail any awards, certifications, or other HVAC-related recognition Proposer or its employees have received in the past five years.
 - ix. Summarize the circumstances if Proposer has had a government contract terminated prior to expiration in the past ten years. If none, provide a statement to that effect.
- ii. Submit the following information for other key personnel who will be assigned to the City's account that were not identified in Item 3, Minimum Qualifications, number iv.
 - (1) Full Name
 - (2) Job Title
 - (3) Work history that indicates three years of experience in HVAC repairs, installation and/or preventative maintenance
 - (4) Any applicable training certifications or licenses
- iii. Submit four client references for whom Proposer has provided HVAC repair, installation and/or preventive maintenance services in the past three years and who are agreeable to respond to a request from the City regarding Proposer's experience. Each client reference should include the following:
 - a. Organization name
 - b. Contact name(s)
 - c. Contact email address
 - d. Address
 - e. Telephone and fax numbers
 - f. Dates of service (start/end)

g. Scope of work (brief description)

B. CAPACITY AND APPROACH

Provide the following information regarding Proposer's approach and capacity to provide services:

- i. The overall approach to delivering the Scope of Services and any strategies Proposer proposes to implement for on-going HVAC preventative maintenance.
- ii. Current number of clients that Proposer is under contract to provide HVAC repair, installation and/or maintenance services.
- iii. Details on the staffing available to respond to calls for service by the City to include the number of employees by each classification (e.g., laborer, apprentice, HVAC Mechanic, Air Conditioning Technician and/or Refrigeration Technician).
- iv. Details of Proposer's dispatch process for service calls during business hours.
- v. Details of Proposer's dispatch process for services calls after business hours.
- vi. Provide the number of hours/days prior notification Proposer requires for service calls during normal business hours.
- vii. Details of any subcontractors proposed and the work to be performed by each.
- viii. Describe the process that will be utilized to supervise, oversee and ensure quality work is performed.
- ix. A detailed list of the major vehicles and HVAC equipment owned by Proposer to include descriptions such as manufacturer, model, year/age and include the quantity of each type vehicle or equipment.
- x. Thoroughly explain Proposer's accessibility and availability for general communications, meetings, and coordination of work with City staff.

C. LOCATION

Per City Code of Ordinances Section 36.14 Local Business Preference; for all acquisitions made pursuant to Requests for Proposals, as provided in City Code of Ordinances Section 36.02(A)(2), the solicitation shall include a weighted criterion for local businesses of five (5) percentage points of the total points in the evaluation criteria published in the solicitation. Businesses must be certified prior to the Due Date and Time for submission of Proposals.

Proposer's who are certified as required will receive the full five points allotted for this evaluation criteria. All other firms will receive zero points in this evaluation criterion.

- i. Provide a copy of Proposer's documentation that confirms Proposer meets the local business requirements and is certified prior to the Due Date and Time for submission of Proposals.

D. FEE PROPOSAL

Pricing submitted must be all inclusive of all labor, supplies, and travel to provide HVAC repair, installation and preventive maintenance services in accordance with the requirements as set forth in this RFP document.

Proposer must submit pricing for all items in Group I, II and III shown below utilizing the Schedule of Fees form. Failure to submit pricing for all items may be cause for rejection of the Proposal. Estimated annual hours and materials are for evaluation

purposes only and do not represent any guarantee of work to be performed. Prices for services are divided into three groups, Group I, Group II, and Group III.

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Fee Proposal Schedule of Fees

Group I - Hourly labor rate, which shall include travel time to and from the work site. Submit the hourly labor rate during working hours (7:30 a.m. thru 4:30 p.m., Monday – Friday)

Group II - Hourly labor rate which shall include travel time to and from the work site. Submit the hourly labor rate for after-hours work (4:30 p.m. through 7:30 a.m., weekends and City holidays).

Group III - Percentage (%) mark-up over Proposer's cost for parts and materials. The City will pay for parts on a cost plus mark-up factor. Successful Proposer's invoices must be accompanied by its invoices for all parts and materials billed.

GROUP I - Hourly Rate of Labor:

GROUP I – Business hours of 7:30 a.m. through 4:30 p.m.			
LABOR	TOTAL EST. ANNUAL HOURS	HOURLY RATE	TOTAL EST. ANNUAL LABOR COST (Hours x Rate)
1. Certified Air Conditioning Contractor	400 Hours	\$	\$
2. HVAC Mechanic/Technicians	200 Hours	\$	\$
3. Apprentice	100 Hours	\$	\$
4. Laborer	100 Hours	\$	\$
GROUP I SUBTOTAL			\$

GROUP II – After hours of 4:30 p.m. through 7:30 a.m., weekends and City holidays			
LABOR	TOTAL EST. ANNUAL HOURS	HOURLY RATE	TOTAL EST. ANNUAL LABOR COST (Hours X Rate)
5. Certified Air Conditioning Contractor	50 Hours	\$	\$
6. HVAC Mechanic/Technicians	50 Hours	\$	\$
7. Apprentice	24 Hours	\$	\$
8. Laborer	12 Hours	\$	\$
GROUP II SUBTOTAL			\$

Schedule of Fees (cont'd)

GROUP III – Parts and Materials		
Total Est. Annual Cost for Parts/Materials	Proposer's percentage of mark-up for Parts/Materials (above Proposer's cost)	TOTAL EST. ANNUAL PARTS/MATERIALS SPEND (Est. Annual Cost X Percentage)
9. \$90,000	%	\$
GROUP III SUBTOTAL		\$
GRAND TOTAL GROUPS I, II, & III (IN NUMERALS)		\$

GRAND TOTAL – GROUPS I, II, & III (IN WORDS) _____
 _____ **DOLLARS**

E. PRICE ESCALATION/DE-ESCALATION:

The Proposer's annual fee for HVAC repair and preventive maintenance services shall remain firm for the initial two year period of the Agreement. Any escalation or de-escalation in pricing for each renewal period will be based on the Bureau of Labor Statistics Employment Cost Index (Private industry workers, Total compensation, Installation, maintenance and repair, All workers, United States, Not seasonally adjusted, CIU2010000430000A) change in most recent 12 month period. The option for renewal shall be exercised upon mutual agreement between Successful Proposer and City, by written agreement with all original terms and conditions.

[Remainder of page intentionally left blank]

SECTION 3: SCOPE OF SERVICES

SCOPE: The Successful Proposer will provide all labor, supervision, equipment, parts and supplies for HVAC Repair and Preventive Maintenance services at various City buildings located in Delray Beach. The Contractor shall have the capability to service multiple locations at any given time within the City of Delray Beach.

1. REQUIREMENTS

Successful Proposer shall:

- a. Perform routine HVAC maintenance to ensure the City's Air Conditioning and Heating systems are working correctly; and
- b. Perform planned and unplanned service and repairs to the City's HVAC systems.
- c. Provide HVAC installation services.
- d. Maintain a current Florida Department of Business & Professional Regulation Contractor Certified License and/or a Registered License to perform work for hire within the State of Florida for the term of the Agreement.
- e. Must maintain a minimum of six full-time employees who each have three years of experience as either an HVAC Mechanic, Air Conditioning Technician and/or Refrigeration Technician.
- f. Secure all permits and arrange for HVAC inspection, as required by City Building Codes.
- g. Perform all work in compliance with City Building Codes and Florida Law.
- h. Only use parts and materials that are first grade products from a reputable manufacturer.
- i. Shall obtain City approval of all parts and materials prior to installation.
- j. Install all parts and materials in compliance with the standards of good workmanship and shall be approved by the City.

2. SERVICE REQUIREMENTS

Upon request by the City, Successful Proposer shall provide the following:

- a. General repair of existing domestic, commercial and industrial air conditioning systems including chillers, cooling towers, and thermal storage units. NOTE: City Hall and Library chillers are under a separate contract.
- b. Locating and repair of refrigerant leaks, recharging and check-out systems.
- c. Provision of parts and installation of air conditioning equipment including compressors, evaporators and control equipment to repair or replace existing installations.
- d. Replacement of air conditioning equipment ducts and other equipment that is in need of repair.
- e. Provision of parts and installation of all piping systems, air conditioning ducts and equipment to complete the new work or rehabilitation project.
- f. Complete revision of the air conditioning system in a building that is being rehabilitated for a new use.
- g. Installation of an air conditioning system for a new building which will include installation of all required equipment to complete the project for final inspection and issuance of a certificate of occupancy.

NOTE: It is anticipated that 90% of the Task Orders issued under the Agreement will be for repair of existing HVAC equipment.

3. PREVENTIVE MAINTENANCE (PM)

For all air conditioning equipment at each site Proposer shall complete the following PM:

a. PM I.

Complete a precision tune-up every six months (June and December) which includes all of the following tasks:

- i. Check and clean evaporator coils.
- ii. Check and clean condenser coils.
- iii. Change filters (w/ pleated) and write date changed on all filters.
- iv. Clean condensate pans and drains, add tablets to inhibit algae growth.
- v. Monitor and adjust refrigerant pressure.
- vi. Adjust and clean blower components.
- vii. Oil / grease all motors and bearings.
- viii. Check and record all voltages and amperages.
- ix. Measure heating and cooling transfer capability.
- x. Check / tighten / clean all electrical connections.
- xi. Lubricate moving parts.
- xii. Check / adjust / replace as needed all belts.
- xiii. Keep units clean.
- xiv. Check / calibrate thermostats.

b. PM II

- i. Complete a change of all pleated filters every six months (September and March)

NOTE: Contractor is responsible for supplying the filters, refrigerant, oils, grease, lubricants, coil cleaners, cleaning supplies, belts and all other materials required to complete each PM). Reports will be given to the manager at each site of the work performed and status of the equipment.

4. **TASK ORDERS:** Task orders will be issued for each HVAC repair, installation and preventive maintenance and repair project under the Agreement. Each task order will contain the scope and/or specifications for the project. Upon request by the City, Successful Proposer shall provide a quote for the project. Upon acceptance of the quote by the City, a notice to proceed will be issued to Successful Proposer.
5. **WORK ESTIMATES:** Upon request by the City, Successful Proposer shall provide estimates on HVAC work, for budgetary purposes, at no additional cost to the City. For such quotes, the City of Delray Beach will provide drawings and detailed requirements, as necessary.
6. **WORK INSPECTION:** Upon notice of completion by Successful Proposer, the City Building Maintenance Supervisor shall inspect the work. The City will notify Successful Proposer of any Work that is found to be deficient. Upon notice, Successful Proposer will have a specified time, to be determined by the City, to correct any and all deficiencies.

A final inspection of all deficient work will be conducted by the City Building Maintenance Superintendent. If the Successful Proposer fails or refuses to complete the work to the City's satisfaction, the City reserves the right to procure the services from another source and hold the Successful Proposer responsible for any cost incurred to remedy the deficient work.

Successful Proposer shall exercise precautions at all times for the protection of persons (including employees) and property. Barricades will be provided by the Successful Proposer at Successful Proposer's expense, when work is performed in areas traversed by persons or vehicles, or when deemed necessary by the City.

7. WORKING HOURS AND RESPONSE TIME

- a. Successful Proposer shall be on-site in response to non-emergency calls during business hours of 7:30 a.m. through 4:30 p.m., Monday through Friday on the next business day after notification.
- b. Successful Proposer shall be on-site in response to non-emergency calls after business hours of 7:30 a.m. through 4:30 p.m., on the next business day after notification.
- c. Successful Proposer shall be on-site within two hours of notification of an emergency, as determined by the City.
- d. No work shall be done on weekends or City's holidays unless specifically authorized by the City.

8. EQUIPMENT

- a. Successful Proposer shall provide its personnel with a working set of hand and power tools for general air conditioning work.
- b. Successful Proposer shall own or have immediate access of the equipment required to provide services to include, but not be limited to, the following:
 - 1) System evacuation equipment.
 - 2) Sheet metal shearing and forming equipment.

9. INVENTORY

The Contractor shall have and maintain an inventory of piping, duct materials and air conditioning equipment to provide for timely completion of Task Orders.

[Remainder of page intentionally left blank]

SECTION 4: FORMS AND INSTRUCTIONS

1. AUTHORIZATION TO BIND PROPOSER

Each proposal must be signed by a Person who is legally authorized to bind the Proposer to the proposal. Each proposal shall remain valid for at least one hundred and fifty (150) days after the Due Date.

The Proposal Submittal Signature Page for Proposals submitted by a corporation must be executed in the corporate name by the CEO or President; by an LLC must be executed by a Member or Manager; by an LP must be executed by a General Partner; by a Partnership must be executed by a Partner and by an Individual must be executed by the Individual. His or her title must appear under his or her signature. If someone other than these authorized individuals executes the Proposal Submittal Signature Page, Proposer must provide documentation such as the company Articles of Organization or Operating Agreement that demonstrates the legal authority of the executor to sign on behalf of Proposer.

2. PROPOSAL FORMAT

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

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

Table 2 - Proposal Format

Chapter 1	Letter of Intent: Briefly state the Proposer's understanding of the services to be rendered, and make a positive commitment to perform according to the requirements noted in this RFP (Limit to two pages). Proposal Submittal Signature Page
Chapter 2	Proposer's Statement of Organization
Chapter 3	Minimum Qualifications
Chapter 4	Public Entity Form, Drug Free Workplace Form, Conflict of Interest Form
Chapter 5	Acknowledgement of Addenda Form
Chapter 6	Proposal Response Requirements
Chapter 7	Evidence of Insurance, Certificate of Insurance showing current coverage, forms, limits.

RESPONSE CHECKLIST

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

- ☐ Letter of Intent
- ☐ Statement of Organization
- ☐ Proposal Response Requirements
 - ☐ Experience Section
 - ☐ Capacity and Approach Section
 - ☐ Location Section
 - ☐ Fee Proposal Section
 - ☐ Appendix A, Pricing Page in Microsoft Excel® format
- ☐ Proposal Submittal Signature Page
- ☐ Minimum Qualifications Documentation
- ☐ Public Entity Crimes Form
- ☐ Drug Free Workplace Form
- ☐ Conflict of Interest Form
- ☐ Acknowledgement of Addenda Form
- ☐ Evidence of Insurance

Form A - Proposal Submittal Signature Page

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

Firm Name:

Street Address:

Mailing Address (if different from Street Address):

Telephone Number(s):

Fax Number(s):

Email Address:

Federal Identification Number:

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

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

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

(Remainder of page intentionally left blank)

Form A – Proposal Submittal Signature Page (cont'd)

Indicate below Proposer's type of organization and provide the required documentation as applicable to demonstrate that the executor of Proposer's Proposal is duly authorized to execute on behalf of, and as the official act of, Proposer.

Select	Type of Organization	Officer Who Signed Proposal Submittal Signature Page	Required Authorizing Documentation
☐	Corporation	President, Vice President, or Chief Executive Officer	None
☐	Corporation	Director, Manager, or other title	Corporate resolution
☐	Limited Liability Company (LLC) – Member-Managed	Member	Articles of Organization or Operating Agreement
☐	Limited Liability Company (LLC) – Manager-Managed	Manager	Articles of Organization or Operating Agreement
☐	Limited Partnership	General Partner	Document demonstrating the legal authority to bind the Limited Partnership
☐	Partnership	Partner	None
		CEO, Director, Manager or other title	Authorizing documentation
☐	Individual	Individual	None

☐ Documentation is not required per the above instructions.

☐ The required authorizing documentation is included with Proposal.

Form B - Public Entity Crimes

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Form C - Drug-Free Workplace

In the event a tie exists at the conclusion of evaluations, preference will be given to the supplier(s) who certifies it has a drug-free workplace program in accordance with Section 287.087, Florida Statutes. The drug-free workplace preference is applied as follows:

TIE: Whenever two or more proposals are equal with respect to scoring for the evaluation criteria (e.g., price, experience, quality, service) are received for the procurement of commodities or contractual services, a proposal received from a supplier that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing a tie will be followed if none of the tied suppliers have submitted this Form C and/or have a drug-free workplace program.

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

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

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Form D - Conflict of Interest Disclosure

The award of the agreement 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 or relative of an employee of the City of Delray Beach.

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

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

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

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

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

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

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Form E - Acknowledgment of Addenda

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

ADDENDA NUMBER	ADDENDA DATE

Signature of Proposer's Agent

Title

Printed Name

Date

APPENDIX A

BUILDING LOCATIONS: HVAC Services

Department	Description	Address	# of Units
Building Maintenance	City Hall	100 N.W. 1 st Avenue	14
Building Maintenance	City Attorney	200 N.W. 1 st Avenue	2
Building Maintenance	Cason Cottage	100 N.W. 2 nd Street	1
Building Maintenance	Delray center for the Arts	51 N. Swinton Avenue	40
Building Maintenance	Environmental Services Admin	434 S. Swinton Avenue	2
Building Maintenance	Federspiel Garage	22 SE 1 st Avenue	1
Building Maintenance	Public Works/ES Complex	434 S. Swinton Avenue	10
Building Maintenance	Utility Maintenance	434 S. Swinton Avenue	2
Building Maintenance	Meter Repair	434 S. Swinton Avenue	1
Building Maintenance	Old School Square Parking Garage	95 N.E. 1 st Avenue	4
Building Maintenance	Parks Maintenance	320 S.W. 4 th Street	2
Building Maintenance	Visitor Center	E. Atlantic avenue / A1A	2
Fire Department	Fire Station #1	501 W. Atlantic Avenue	7
Fire Department	Fire Station #2	35 Andrews Avenue	3
Fire Department	Fire Station #3	651 Linton Boulevard	2
Fire Department	Fire Station #4	4321 Lake Ida Road	2
Fire Department	Fire Station #5	4000 Old Germantown Rd	4
Fire Department	Fire Station #6 – Highland Beach	3612 S. Ocean Boulevard	2
Park & Recreation	Adult Recreation Center	802 N.W. 1 st Street	2
Park & Recreation	Lifeguard Headquarters	340 S. Ocean Boulevard	1
Park & Recreation	Community Center	50 N.W. 1 st Avenue	9
Park & Recreation	Currie Common Park	750 S.E. 2 nd Avenue	1
Park & Recreation	Delray Marina	159 Marina Way	1
Park & Recreation	Mae Volen	850 N. Congress Avenue	4
Park & Recreation	Miller Park #1	1905 S.W. 4 th Avenue	2
Park & Recreation	Miller Park #2	1905 S.W. 4 th Avenue	1
Park & Recreation	Miller Park #3	1905 S.W. 4 th Avenue	1
Park & Recreation	Pompey Park	1101 N.W. 2 nd Street	5
Park & Recreation	Pompey Concession Stand	1101 N.W. 2 nd Street	1
Police Department	Police Complex	300 S.W. Atlantic Avenue	7
Police Department	Police Substation (Beach)	2 S. Ocean Boulevard	1
Police Department	Police Substation (OSS Garage)	95 NE 1 st Avenue	1
Water/Sewer Division	Water Treatment Plant	200 N.W. 6 th Street	10
Golf Course	Golf Course DBGC	2200 Highland	14
Golf Course	Lake View GC	1200 Dover Rd.	4
NRC	Community Improvement	141 S.W. 12th Avenue	2
CLT	Community Improvement	145 SW 12 th Avenue	1
Tennis Center	Swim & Tennis	Jaeger Drive	4
Tennis Center	Ticket Booth	30 NW 1 st Avenue	1
Tennis Center	Tennis Center Club House	201 West Atlantic Ave	2

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND

FOR
HVAC REPAIRS AND PREVENTIVE MAINTENANCE SERVICES

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

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

WITNESSETH:

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

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

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

- 1.1 **Agreement** - This Agreement includes the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the City's Building Maintenance Superintendent. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Contractor and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided,

however, that such instructions and determinations do not change the Scope of Services.

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

ARTICLE 2 SCOPE OF SERVICES

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

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This Agreement is in full force and effect upon full contract execution by the City of Delray Beach. The term of the Agreement shall be from April 22, 2017 through April 30, 2019 with three one-year options to renew. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 In the event services are scheduled to end due to the expiration of this Agreement, the Contractor agrees that it shall continue services upon the request of the Contract Administrator. The extension period shall not extend for greater than six months beyond the term of the Agreement. The Contractor shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement and as amended. The Chief Purchasing Officer shall notify Contractor of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4 COMPENSATION

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

4.1.1 Contractor acknowledges that the dollar limitation set forth in Section 4.1 is a limitation upon, and describes the maximum extent of, City's obligation, but does not constitute a limitation, of any sort, upon Contractor's obligation to incur expenses or perform the services identified in Article 2.

4.3 METHOD OF BILLING AND PAYMENT

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

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

4.3.3 Contractor shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Contractor withholds an amount from subcontractors or

suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Contractor at:

ARTICLE 5 INDEMNIFICATION

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

ARTICLE 6 INSURANCE

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

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Contractor shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Contractor

acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

- 7.5 In the event this Agreement is terminated for any reason, any amounts due Contractor shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8 NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Contractor to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

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

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

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

ARTICLE 9
MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Contractor grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

9.2.1 IF THE SECOND PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SECOND PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK MAY BE REACH VIA TELEPHONE AT 561-243-7060 OR BY EMAIL AT CITYCLERK@MYDELRAYBEACH.COM..

9.2.2 Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City 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 Florida Statute or as otherwise provided by law.
- iii. 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 Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all

public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 INSPECTOR GENERAL.

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

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

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

Contractor and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been

resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall ensure that the requirements of this Section 9.4 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

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

9.6 PUBLIC ENTITY CRIME ACT

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

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

9.7 INDEPENDENT CONTRACTOR

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the

supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

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

9.9 NOTICES

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

For City:

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

For Contractor:

9.10 ASSIGNMENT AND PERFORMANCE

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

transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

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

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

9.11 CONFLICTS

Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

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

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

9.12 MATERIALITY AND WAIVER OF BREACH

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

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any

breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.13 COMPLIANCE WITH LAWS

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

9.14 SEVERANCE

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

9.15 JOINT PREPARATION

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

9.16 INTERPRETATION

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

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to

herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.19 AMENDMENTS

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

9.20 PRIOR AGREEMENTS

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

9.21 PAYABLE INTEREST

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

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

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

9.23 REPRESENTATION OF AUTHORITY

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

9.25 MULTIPLE ORIGINALS

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

ARTICLE 10 PERFORMANCE BOND

Contractor will execute and deliver to the City, within ten (10) days after notification of award, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of the Proposer's bid amount. If the bond is on an annual coverage basis, renewal of

each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing bond. A surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent must execute the Performance Bond. If a letter of credit is chosen, it must be in a form acceptable to the City, drawn on a bank acceptable to the City, and issued in favor of the City.

The amount herein above set is not intended to be or shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of the Agreement by the Contractor.

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

ARTICLE 11 ORDER OF PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Terms and conditions as contained in this Agreement;
- B. RFP No. 2017-019, Plumbing Maintenance and Repair Services, dated December 6, 2016, and all its addenda;
- C. Contractor's response to RFP No. 2017-019, Plumbing Maintenance and Repair Services, and any subsequent information submitted by Contractor during the evaluation and negotiation process.

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

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

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By _____
Cary D. Glickstein, Mayor
____ day of _____, 20__.

APPROVED AS TO FORM:

R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA
AND

SECOND PARTY

By _____
(Signature)

(Printed name, Title)

_____ day of _____, 20____

WITNESS:

(Signature)

(Printed name)

WITNESS:

(Signature)

(Printed name)

(SEAL)

EXHIBIT A
SCOPE OF SERVICES

[Scope of Services will be inserted prior to execution of Agreement]

SAMPLE

EXHIBIT B
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP No. 2017-019

Project Title _____

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

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

Subcontractor or
Supplier's name
and address

Date of disputed
invoice

Amount in
dispute

_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Dated _____, 20____

Contractor

By _____
(Signature)

By _____
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

(Continued)

STATE OF _____)
) SS.
COUNTY OF _____)

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

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

(NOTARY SEAL)

(Signature of person taking acknowledgment)

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

(Title or rank)

My commission expires:

(Serial number, if any)

EXHIBIT C
INSURANCE REQUIREMENTS

Contractor shall supply the required insurance certificates to the Purchasing Department and receive approval by the City Risk Manager within 10 days of final execution of the Agreement.

Contractor shall carry the following minimum types of insurance:

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

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

- D. Motor Vehicle Liability Insurance: with limits of not less than \$1,000,000 per occurrence covering all vehicles associated with Proposer's operations to include all owned, non-owned and hired vehicles.

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- VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

Appendix C
RFP 2017-028
Pricing

GROUP I - Hourly Rate of Labor:

GROUP I – Business hours of 7:30 a.m. through 4:30 p.m.			
LABOR	TOTAL EST. ANNUAL HOURS	HOURLY RATE	TOTAL EST. ANNUAL LABOR COST (Hours x Rate)
1. Certified Air Conditioning Contractor	400 Hours	\$	\$
2. HVAC Mechanic/Technicians	200 Hours	\$	\$
3. Apprentice	100 Hours	\$	\$
4. Laborer	100 Hours	\$	\$
GROUP I SUBTOTAL			\$

GROUP II – After hours of 4:30 p.m. through 7:30 a.m., weekends and City holidays			
LABOR	TOTAL EST. ANNUAL HOURS	HOURLY RATE	TOTAL EST. ANNUAL LABOR COST (Hours X Rate)
5. Certified Air Conditioning Contractor	50 Hours	\$	\$
6. HVAC Mechanic/Technicians	50 Hours	\$	\$
7. Apprentice	24 Hours	\$	\$
8. Laborer	12 Hours	\$	\$
GROUP II SUBTOTAL			\$

GROUP III – Parts and Materials		
Total Est. Annual Cost for Parts/Materials	Proposer's percentage of mark-up for Parts/Materials (above Proposer's cost)	TOTAL EST. ANNUAL PARTS/MATERIALS SPEND (Est. Annual Cost X Percentage)
9. \$90,000	%	\$
GROUP III SUBTOTAL		\$
GRAND TOTAL GROUPS I, II, & III (IN NUMERALS)		\$

GRAND TOTAL – GROUPS I, II, & III (IN WORDS) _____
 _____ DOLLARS