



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

RFP No. 2017-025
FINANCIAL ADVISORY SERVICES (946-48)

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DEPUTY VICE MAYOR
COMMISSIONER
CITY MANAGER

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Purchasing Department ♦ (561) 243-7161 ♦ purchasing@mydelraybeach.com

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

**RFP No. 2017-025
Financial Advisory Services
Summary**

ISSUE DATE: January 16, 2017

DEPARTMENT: Finance

DUE DATE: February 21, 2017

TIME: 2:00 P.M., ET

The City of Delray Beach, Florida is soliciting proposals for the provision of a Financial Advisory 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).

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.

1. **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.
2. **CORRESPONDENCE:** The number of this RFP must appear on all correspondence, or inquiries, pertaining to this RFP.
3. **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.
4. **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.
5. **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.**

6. **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".
- Five (5) 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.

7. **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.

8. **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.
9. **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.

10. **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.

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

12. **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 with the Successful Proposer. The City reserves the right to waive any informality in a proposal, and to award the purchase in the best interest of the City. Discrepancies in the multiplication of units of work and unit prices in Proposer's Fee Proposal will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

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.

13. **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.

14. **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 14, 2017
Deadline for Delivery of Questions	February 14, 2017
Due Date and Time (for delivery of Proposals)	February 21, 2017 by 2:00 p.m., ET
Institute Cone of Silence	February 21, 2017 at 2:00 p.m., ET
Phase 1 Evaluation	February 24, 2017
Phase 2 Evaluation Selection Committee Meeting Technical Evaluations	March 7, 2017 1:00 p.m., ET at City Hall Conference Room
Selection Committee Meeting – Interviews (if conducted)	March 14, 2017 1:00 p.m., ET at City Hall Conference Room
Selection Committee Meeting - Final Evaluations	March 17, 2017 9:00 a.m., ET at City Hall Conference Room

15. MEETING LOCATIONS:

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

16. 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.

17. 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.

18. 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.

19. 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

A. INTRODUCTION AND INFORMATION

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	40
Capacity & Approach	30
Fee Proposal	15
Interviews	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 rank Proposals without conducting interviews with Proposers. Therefore, each Proposer must ensure that its proposal contains all of the information requested in this RFP.

The Selection Committee, may, at its discretion, request interviews with one of more of the Proposers. If interviews are conducted, the evaluation will be on the knowledge demonstrated by the Proposer and its team member and comprehensive explanations and/or augmentation of information. 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. All costs incurred by Proposer to participate in the interview, including travel, will be the sole responsibility of the Proposer.

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 The City's Acceptance or Rejection of Proposals

- 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

Proposer is solely responsible for all costs incurred by Proposer 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 may be accepted, other than the costs stated on the Fee Proposal pages. Failure to use the City's Fee Proposal form and provide costs as requested in this RFP may deem Proposer's proposal non-responsive.

Proposer must quote fixed fees for all services stated in the RFP. Fees stated in the Fee Proposal must be all inclusive, including travel to and from the City.

11. 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.

12. Modification of Services

The City reserves the right to delete any portion of the work at any time, 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, 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 scope of services, the Successful Proposer will submit a revised fee to the City for approval prior to issuance of an amendment to the Agreement to incorporate such revisions.

13. 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.

14. 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 and negotiation processes.

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.

15. Subcontractors

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 its subcontractors' performance and liable for any subcontractors' non-performance and/or acts and omissions.

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.

16. Insurance Requirements

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

Selected Proposer shall carry the following minimum types of insurance:

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

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

- D. Automobile Liability Insurance: with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage.
- E. Errors and Omissions Insurance: with limits of not less than five million dollars (\$5,000,000).
- F. Commercial Crime Liability Insurance: with limits of not less than five million dollars (\$5,000,000).

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 Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

17. 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.

18. Unauthorized Work

The Successful Proposer(s) shall not begin work until an Agreement has been awarded by the City Commission and the Agreement is fully executed; a copy of which shall be provided to the Successful Proposer(s) following Commission award.

19. 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, acts 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.

20. News Releases/Publicity

News releases, publicity releases, or advertisements relating to the Agreement or the work associated with this RFP shall not be made by Proposers without prior City approval.

21. Agreement Period

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

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(s) 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.

22. 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.

23. 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.

24. 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.

25. REQUEST FOR RECORDS; NONCOMPLIANCE

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.

26. **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.

27. 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.

- 28. **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.
- 29. **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.

30. **DEBARRED OR SUSPENDED PROPOSERS:** The Proposer certifies, by submission of a 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.
31. **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.
32. **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.
33. **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.
34. **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 it's' branches.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.
41. **REQUIREMENTS:** The requirements 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 requirements are overly restrictive, the Proposer must notify the Purchasing Department prior to the Deadline for Delivery of Questions. If no such notification is received prior to the Deadline for Delivery of Questions, the City will consider the requirements to be acceptable to all Proposers.
42. **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.

43. **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 by the Successful Proposer should any governmental agency, authority, department, and municipality (collectively referred to as Public Entities) desire to utilize the awarded Agreement resulting from this RFP.

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 requirements only.

44. **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.
45. **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.
46. **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.
47. **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.

SECTION 2: PROPOSAL RESPONSE REQUIREMENTS

1. 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. List of officers, owners and/or partners, or managers of the firm. Include names, business addresses, email addresses, and phone numbers.
- H. Any additional organizational information that Proposer wishes to supply to augment its organizational structure.
- I. Contact information for Proposer's Primary representative during this RFP process.
Name
Phone
E-mail
Mailing Address
City, State, Zip
- J. Contact information for Proposer's Secondary representative during this RFP process.
Name
Phone
E-mail
Mailing Address
City, State, Zip
- K. Briefly summarize any potential conflicts of interest, pending or current litigation relating to the performance of requested financial advisory services.in which Proposer is a part to.

Disclose any circumstance where the conduct of the Proposer is being investigated or has had an adverse determination by any legal or administrative body.

- L. 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).

2. MINIMUM QUALIFICATIONS

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

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

No documentation is required. The City will verify registration.

3. 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:
 - a. Provide experience with similar financial advisory services in Florida and with other municipalities of similar size and characteristics of the City in relation to the scope of services being requested.
 - b. Briefly describe the range of activities performed by the office doing the required services.
 - c. Awards, certifications, or other related recognition.
- ii. Submit a detailed narrative description documenting Proposer's specific experience including, but not limited to, the following:
 - a. Knowledge of financial planning and marketing while demonstrating adequate experience, organization, facilities, equipment and personnel to ensure prompt and efficient service to the City of Delray Beach
 - b. Background in designing, implementing, and monitoring of the financing element of the capital improvements plan.
 - c. Experience specific related to debt capacity analysis, debt ratio study, alternatives and innovative financing options, identification of potential revenue sources and methods of financing permitted under Florida law.
- iii. Submit a detailed narrative description documenting experience of the key personnel proposed by Proposer to include, but not limited to the following:
 - a. Provide brief resume for each person to be assigned to the contract, with emphasis on financial advisory services for governmental units.
 - b. Provide name of appointed a person to act as a primary contact with the City of Delray Beach. This person or back-up shall be readily available during normal work hours by phone or in person, and shall be knowledgeable of the terms of the contract and the service being provided.

- c. Indicate current workload and the current percentage of time available for allocation to the City.
- iv. Each Proposer shall submit at least five client references for whom they have provided services similar to those specified in this RFP in the past five (5) 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. APPROACH AND CAPACITY

- i. Provide a detailed narrative description of the proposed approach and methodology for engaging with City representatives while in the course of performing the duties, including, but not limited to, the following:
- ii. Provide summary of Proposers understanding, based upon firms research of the issues and concerns over the next five years.
- iii. Provide three innovative financing techniques which have been developed and/or implemented in connection with previous engagements. Include a brief description of project type, project size, financing concept considered (regardless of final method used), as well as brief comments concerning the concepts' applicability to the City's financing needs.
- iv. Proposer shall provide an estimate of the time that will be required of City staff in assisting in financial advisory services.
- v. The overall approach to delivering the Scope of Services and any strategies Proposer proposes to implement
- vi. Goals that the Proposer would like to achieve
- vii. Narrative that demonstrates working knowledge and understanding of the requirements of the Scope of Services
- viii. Details of implementation plan and schedule.
- ix. Proposer shall specify the location(s), including the complete physical address, where the work for this project will be performed, including work performed by subcontractors, if applicable.
- x. Proposer shall thoroughly explain:
 - a. Its accessibility in the areas of availability for meetings, general communications, coordination, and supervision
 - b. How the proposer physically plans on attending pre-scheduled meetings
 - c. How the proposer plans on ensuring accessibility and availability during the term of the Agreement

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.

[Remainder of page intentionally left blank]

D. FEE PROPOSAL

Proposers should use this form for submitting its Fee Proposal. The following pricing is submitted as, all inclusive, to provide financial advisory services in accordance with the requirements identified in this Scope of Work, and as set forth in this RFP document.

The Proposer's annual fee for financial advisory services shall remain firm for the term of the Agreement. The option for renewal shall be exercised upon mutual agreement between Contractor and City, by written agreement with all original terms and conditions adhered to with no deviations.

4. Hourly Fees - if any.

1.	Fee per hour	\$ _____
2.	Flat fee	\$ _____
3.	Include a list of out-of-pocket expenses, expected to be paid by the City, if any.	
4.	Payment Terms (e.g., monthly, quarterly)	

5. Bond Issue Fees

5.	Bond Issue Fee based on percent of bond issue or other	_____ %
Comments:		

SECTION 3: SCOPE OF SERVICES

A. HISTORY AND BACKGROUND:

The City of Delray Beach is a political subdivision of the State of Florida and is located in the southeastern part of the state in Palm Beach County on the Atlantic shoreline. Delray Beach was first settled as an agricultural community in 1895 and first incorporated in 1911. It was later incorporated as the City of Delray Beach on May 11, 1927. The City has a current estimated permanent population of 65,100 with additional estimated 12,600 seasonal residents.

The City of Delray Beach is a full service city with a Commission-Manager form of local government. The citizens elect a Mayor at large on a non-partisan basis every three (3) years who presides over four (4) Commissioners who are elected at large on a non-partisan basis for three (3) year terms in alternating years. The City Commission sets policy, approves legislation, adopts the Annual Budget, and sets rates and fees. The City Commission appoints the City Manager, who is the chief administrative officer of the City, and the City Attorney, who acts on all legal matters pertaining to the City. The City Manager is charged with overseeing the daily business of the City and is responsible for the supervision of the City departments and employees. Department Heads serve at the pleasure of the City Manager and other employees are covered by either Civil Service regulations or union agreements.

The City of Delray Beach has a very aggressive capital improvement plan which will require regular financing. Please see the City's adopted budget Capital Improvement Plan section for details on the currently adopted project listing.

The Capital Improvement Plan budget is located on the City website and available for download at :

<http://cms5.revize.com/revize/delray/FY%2016%2017%20Annual%20Adopted%20Budget.pdf>

The City of Delray Beach provides a full range of community services including public safety (police, fire protection and rescue services); parks and recreation (beaches, pools, marina, boat ramps, parks and multiple recreation centers); and public works (essential traffic, street maintenance and parking). Other recreational amenities of the City include golf courses, tennis courts and the tennis stadium.

The Environmental Services Department provides water and sewer, stormwater, engineering and construction services. The Community Improvement Department provides building permits, inspections, code enforcement, garbage and trash services, and administers the City's Community Development Block Grants. The City also provides general administrative services and financial support services. The City provides water, fire protection, emergency medical services, police dispatch services, building inspection and permitting, and limited sewer services to the Town of Gulfstream. Fire protection and emergency medical services, and limited water services are provided to the Town of Highland Beach. Both towns are serviced on a contractual basis.

B. SERVICES RELATED TO FINANCIAL PLANNING

1. Provide the City with comprehensive reviews of its capital structure to include continuous reviews of outstanding indebtedness (bonds, loans, and leases) and provide recommendations relative to the refinancing or early extinguishment of said obligations.
2. Assist the City in designing, implementing, and monitoring of the financing element of the capital improvements plan in connection with the City of Delray Beach Comprehensive Plan which was prepared in accordance with the Community Planning Act.

These services include an overall evaluation of all financing sources presently available to the City, including internally generated funds, debt financing, leasing, federal or state grants, private sources, and various combinations of all those sources.

3. The financial advisor shall assist and/or prepare cash flow analyses for each of the various major capital improvements included in the Comprehensive Plan annually.
4. Prepare Comprehensive Financial Plans, as requested, including a debt capacity analysis, debt ratio study, alternatives and innovative financing options, identification of potential revenue sources and methods of financing permitted under Florida law.
5. Provide the City with Financial Advisory Services on any requested financial issue that the firm can provide expert advice on.
6. Provide the City with advice on proposed and actual changes regarding economic development policies, tax laws and financial market developments that could affect the City's financial structure and the impact of such policy on the financial market's perception of the City.

C. SERVICES RELATED TO FINANCIAL MARKETING

1. Provide assistance to the City in broadening the market for its debt.
2. Assist the City with consultations and presentations to rating agencies/credit enhancement providers to secure the most favorable and economical credit rating or to maintain an existing credit.

C. SERVICES RELATED TO THE ISSUANCE OF DEBT

1. Develop plans of finance when requested for issuance of debt including identification of revenues available for security, recommended amortization schedule, cash flow analysis, aggregate principal amount of bonds to be issued, the timing of the offering, the definitive structure of the bond issue, and any optional redemption and call provisions. This study will include a review of alternative financing techniques, if applicable, a discussion of rating/credit enhancement issues, a recommendation of the method of sale, and solicitation of proposals for specific consulting services, as necessary. The Financial Advisors will not participate either directly or indirectly as

- underwriters in the sale of the bonds, nor have any financial interest, directly or indirectly in such sale, except as to compensation paid hereunder by the City.
2. Review of reports to ensure that financial related assumptions are reasonable and that such reports adequately address technical, economic and financial concerns.
 3. Prepare a timetable and distribution list for bond issues and assist the City in coordinating meetings and conference calls.
 4. Provide advice and assistance, as needed, to the City, bond counsel, and disclosure counsel as to preparation of the necessary bond authorizing ordinance(s) and other proceedings including a Notice of Sale, if required.
 5. Assist, as required, with validation of any bond issues through preparation of financial tables and exhibits and the preparation of testimony.
 6. Assist the City in preparing its debt issuance for market whether the sale is made through a competitive or negotiated offering or any other type of sale. Through any method of sale, the financial advisor will assist the City's Disclosure Counsel in the preparation of the preliminary and final official statement that conforms to current acceptable disclosure guideline standards.

For competitively bid bond issues:

- i. 3.6.1 Assist the City in preparing the bid documents, including but not limited to the notice of sale.
- ii. 3.6.2 At the time of the sale, advise the City as to the best bid received, based upon the verification of bids, and recommend an award which, in the Financial Advisor's judgment is in the best interest of the City.
- iii. 3.6.3 Assist in bid protest procedures, as needed.

For negotiated bond issues:

- i. 3.6.4 Assist in determining the optimal timing of the issue.
- ii. 3.6.5 Assist the City in preparing a Request for Proposal for Underwriting Services, if necessary.
- iii. 3.6.6 Assist the City in preparing presentations to underwriters in order to fully describe the bonds to be issued, when required.
- iv. 3.6.7 Participate in the evaluation of the proposals received with selected City personnel.
- v. 3.6.8 Participate in the "pricing call" and advise the City as to the reasonableness of the components of the underwriter's spread.

For other means of bond procurement:

As directed by the City.

- i. Provide for the solicitation of competitive proposals for printing the official statement, bid forms, and paying agent/registrar services.

- ii. Assist the City in selecting trustees, paying agents and other financial intermediaries, as necessary, and assist in arranging for appropriate bond insurance as required.
- iii. Advise the City on the condition of the bond market prior to and at the time of the sale of the debt. This activity should address market volume, general economic conditions and competing offerings on a national and statewide basis.
- iv. Assist the City at the time of sale with the negotiation of the terms of the sale (fees, interest rates and interest rate yields, and redemption provisions) if such sale is negotiated or, if sold at competitive sale, review and verify all bids received by the City. The financial advisor shall also recommend to the City whether such negotiated or competitive proposals should be accepted or rejected for each bond issue and indicate whether the transaction terms are the most beneficial to the City for the type and timing of each transaction.
- v. Assist the City, as needed, with coordination and supervision of the many events related to the closing for the debt issuance.
- vi. In the area of short-term financing, provide the City with advice, guidance and assistance in bank loans, leasing, and commercial paper, upon request.
- vii. The Financial Advisors shall be available to the City to discuss and make recommendations on such other financial matters as requested by the City, and shall be available for formal presentations to the Mayor and Council, as necessary.

SECTION 4: FORMS AND INSTRUCTIONS

D. 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 execute 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.

E. PROPOSAL FORMAT

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

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

Table 2 - Proposal Format

Chapter 1	Letter of Intent: Briefly state the Proposer's understanding of the services to be rendered, and make a positive commitment to perform according to the requirements noted in this RFP but should not exceed two (2) pages. Proposal Submittal Signature Page
Chapter 2	Proposer's Statement of Organization (Section 2, Item 2)
Chapter 3	Minimum Qualifications (Section 2, Item 3)
Chapter 4	Public Entity Form, Drug Free Workplace Form, Conflict of Interest Form
Chapter 5	Acknowledgement of Addenda Form

Chapter 6	Proposal Response Requirements (Section 2, Item 4)
Chapter 7	Evidence of Insurance, Professional Licenses, and Certificates: Certificate of Insurance showing coverage, forms, limits. Actual insurance certificates will be required from recommended contractor, prior to award. Submit a copy of all Licenses, Certificates, Registrations, and Permits required to perform the work that Proposer and/or its staff possess.

[Remainder of page intentionally left blank]

RESPONSE CHECKLIST

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

- ☐ Letter of Transmittal
- ☐ Statement of Organization Section
- ☐ Proposal Requirements
 - ☐ Minimum Qualifications
 - ☐ Section A, Experience
 - ☐ Section B, Capacity and Approach
 - ☐ Section C, Location
 - ☐ Section D, Fee Proposal
- ☐ Letter of Intent
- ☐ Proposal Submittal Signature Page
- ☐ Proposer's Statement of Organization
- ☐ Public Entity Crimes Form
- ☐ Drug Free Workplace Form
- ☐ Conflict of Interest Form
- ☐ Acknowledgement of Addenda Form
- ☐ Agrees to Comply with all Specification Requirements
- ☐ Evidence of Insurance, Professional Licenses, and Certificates

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 - Signature Authority

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
<input type="checkbox"/>	Corporation	President, Vice President, or Chief Executive Officer	None
<input type="checkbox"/>	Corporation	Director, Manager, or other title	Corporate resolution
<input type="checkbox"/>	Limited Liability Company (LLC) – Member-Managed	Member	Articles of Organization or Operating Agreement
<input type="checkbox"/>	Limited Liability Company (LLC) – Manager-Managed	Manager	Articles of Organization or Operating Agreement
<input type="checkbox"/>	Limited Partnership	General Partner	Document demonstrating the legal authority to bind the Limited Partnership
<input type="checkbox"/>	Partnership	Partner	None
		CEO, Director, Manager or other title	Authorizing documentation
<input type="checkbox"/>	Individual	Individual	None

☐ Documentation is not required.

☐ 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 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

Sample Agreement

AGREEMENT

BETWEEN

THE CITY OF DELRAY BEACH

AND

FOR

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

and

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

WITNESSETH:

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

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

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

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

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

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

ARTICLE 2 SCOPE OF SERVICES

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

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon written request by the City. The Second Party shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4 COMPENSATION

- 4.1 City will pay Second Party, the fees and payment terms as set forth in Exhibit D, Fees and Payments, which is attached hereto and made a part hereof.

ARTICLE 5 INDEMNIFICATION

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

ARTICLE 6 INSURANCE

- 6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "C" in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.

- 6.3 Within fifteen (15) days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "C." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Second Party uses a subconsultant or subcontractor, Second Party shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may

also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:

- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8

NON-DISCRIMINATION

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

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

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

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

ARTICLE 9 MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

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

9.2 PUBLIC RECORDS

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 Second Party 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 Second Party 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 Second Party or keep and maintain public records required by the City to perform the service. If the Second Party transfers all public records to the City upon completion of the Agreement, the Second Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Second Party keeps and maintains public records upon completion of the Agreement, the Second Party 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.

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

9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second

Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

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

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

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

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

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

9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially

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

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

9.7 INDEPENDENT CONTRACTOR

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

9.8 THIRD PARTY BENEFICIARIES

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

9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the

place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

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

For Second Party:

9.10 ASSIGNMENT AND PERFORMANCE

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

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

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

9.11 CONFLICTS

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

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

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

9.12 MATERIALITY AND WAIVER OF BREACH

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

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

9.13 COMPLIANCE WITH LAWS

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

9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to

terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

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

9.16 INTERPRETATION

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

9.17 PRIORITY OF PROVISIONS

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

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other

jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.19 AMENDMENTS

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

9.20 PRIOR AGREEMENTS

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

9.21 PAYABLE INTEREST

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

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

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

9.22 INCORPORATION BY REFERENCE

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

9.23 REPRESENTATION OF AUTHORITY

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

9.25 MULTIPLE ORIGINALS

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

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. <insert>, <insert title>, dated <date>, and all its addenda;
- C. Second Party's response to RFP No. <insert>, <insert title>, and any subsequent information submitted by Second Party 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 Second Party, signing by and through its _____, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By _____
Cary D. Glickstein, Mayor

_____ day of _____, 20____.

APPROVED AS TO FORM:

R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA
AND

SECOND PARTY

WITNESS:

(Signature)

(Printed name)

WITNESS:

(Signature)

(Printed name)

By _____
(Signature)

(Printed name, Title)

____ day of _____, 20____

(SEAL)

EXHIBIT A
SCOPE OF SERVICES

[Scope of Services will be inserted prior to execution]

EXHIBIT B

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP/RLI/Bid/Contract No. _____

Project Title _____

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

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

Subcontractor or
Supplier's name
and 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

Second Party shall carry the following minimum types of insurance:

- G. Workers' Compensation Insurance: with the statutory limits.
- H. 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.
- I. Comprehensive General Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

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

- J. Automobile Liability Insurance: with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage.
- K. Errors and Omissions Insurance: with limits of not less than five million dollars (\$5,000,000).
- L. Commercial Crime Liability Insurance: with limits of not less than five million dollars (\$5,000,000).

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 Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

EXHIBIT D
FEES AND PAYMENTS

[Will be inserted prior to execution]