



CITY OF DELRAY BEACH  
100 NW 1<sup>st</sup> AVENUE, DELRAY BEACH, FL 33444

## **Invitation to Bid 2017-047 Bulk Gasoline and Diesel Fuel (405-15)**

MAYOR	- CARY D. GLICKSTEIN
VICE MAYOR	- JORDANA JARJURA
DEPUTY VICE MAYOR	- MITCH KATZ
COMMISSIONER	- SHELLY PETROLIA
INTERIM CITY MANAGER	- NEAL DE JESUS

Purchasing Department ♦ (561) 243-7161 ♦ [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com)

**CITY  
INVITATION TO BID  
2017-047**

**CONFIRMATION OF RECEIPT OF BID**

<b>Title:</b>	<b>Purchase and Delivery of Bulk Gasoline and Diesel Fuel</b>
<b>Bidder Name:</b>	

This **Confirmation of Receipt of Bid** form may be used by Bidders who choose the hard copy (paper) bid submission method for delivery of Bids. Keep this form separate from the bid response. Prior to delivery of the bid response to the City Hall Lobby reception desk, Bidder should fill in the Bidder name in the space provided above. At the time of delivery, present this form to the receptionist who will date and time stamp the form confirming receipt. Bidders should keep this form with their records.

**Submission Deadline:**

**April 25, 2017, 2:00 P.M. ET**

**Deliver to:**

**City of Delray Beach  
Purchasing Division  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444**

**City of Delray Beach**

**Confirmation of Receipt (Date/Time Stamp):**

**CITY OF DELRAY BEACH**

**ITB No. 2017-047  
Bulk Gasoline and Diesel Fuel**

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**CITY OF DELRAY BEACH  
PURCHASING DEPARTMENT  
TEL: (561) 243-7161  
FAX: (561) 243-7166**

### **INVITATION TO BID INSTRUCTIONS**

**ITB NO: 2017-047**

**TITLE: Bulk Gasoline and Diesel Fuel**

**ISSUE DATE: March 21, 2017**

**DEPARTMENT: Environmental Services**

**DUE DATE: April 25, 2017**

**TIME: 2:00 PM ET**

The City of Delray Beach, Florida (City) is soliciting bids an Agreement for the purchase and delivery of Bulk Gasoline and Diesel Fuel, as identified herein. Bidders must comply with the requirements contained in this Invitation to Bid (ITB) and submit all the required information and forms.

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

- BidSync – [www.bidsync.com](http://www.bidsync.com)
- Purchasing Department webpage on the City of Delray Beach [website](#)
- Request via email [purchasing@mydelraybeach.com](mailto: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 ITB documents and solicitation information received by sources other than those listed.

2. **REQUIRED INFORMATION:** This ITB contain various sections which require completion. Responses to this ITB (Bids) must be completed and returned prior to the Due Date and Time set for Bid opening or the Bidder will be found non-responsive. It is the sole responsibility of the Bidder to submit the forms and/or attachments as required in this ITB.
3. **CORRESPONDENCE:** The number of this ITB must appear on all correspondence or inquiries pertaining to this ITB.
4. **NOTICE OF PUBLIC DOCUMENTS:** Any and all materials initially or subsequently submitted as part of the solicitation process for this ITB shall become the property of the City and shall be treated as City documents subject to applicable laws for public records.

5. **ADDENDA:** Any interpretations, corrections or changes to this ITB will be made by addenda. Sole issuing authority for all addenda shall be vested in the City Purchasing Department. Addenda will be posted for download and/or made available through the City notification methods shown above.
6. **PREFERRED SUBMISSION METHOD, ELECTRONIC BID:** Submission of bids electronically will be through a secure mailbox at BidSync ([www.bidsync.com](http://www.bidsync.com)) until the Due Date and Time as indicated in this ITB. BidSync does not accept electronic bids after the Due Date and Time. It is the sole responsibility of the Bidder to ensure its Bid submission via BidSync is complete prior to the solicitation Due Date and Time. There is no cost to the Bidder to submit a bid to a City via BidSync. Electronic submission of bids will require the uploading of forms and/or attachments as designated in this ITB. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate file.
7. **ALTERNATIVE SUBMISSION METHOD, HARD COPY (PAPER) BID:** Paper hard copies of Bidder's bid may be submitted as an alternative method. The bid 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. 1<sup>st</sup> Avenue, Delray Beach, Florida, 33444. Bids must be presented in a sealed container.

It is the sole responsibility of the Bidder to utilize the forms provided in this ITB. The Bidder's name, return address, the ITB number, ITB title, Due Date and Time must be noted on the outside of the sealed container. For hard copy submission, included the following in the sealed container:

- One (1) unbound original clearly identifying Bidder and marked "ORIGINAL".
- One (1) bound copy(s) clearly identifying Bidder and marked "COPY" with all required information and identical to the original.
- One (1) electronic format copy clearly identifying Bidder. NOTE: Electronic format copy should be submitted on a USB portable flash memory card/drive in Adobe Acrobat® portable document format (PDF) in one continuous file. Do not password protect or otherwise encrypt the electronic format copy. Electronic format copy must include all required information and be identical to the original.

**NOTE: Bid responses submitted via facsimile or email will not be considered.**

8. **BID OPENINGS:** Immediately following the Due Date and Time, all bids, including those submitted electronically via BidSync, will be publicly opened at the City of Delray Beach City Hall, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL or other designated City location as posted.
9. **LATE BIDS:** Bids received after the Due Date and Time will be returned to Bidder and will be considered non-responsive. The City is not responsible for late delivery due to weather conditions, delivery service, internet service outages or any other reasons.
10. **EVALUATION OF BIDS:** The review process will be conducted in two phases. In Phase One, the Chief Purchasing Officer (CPO) or designee shall determine whether each Bidder is responsive and responsible. A responsive Bidder shall mean a Bidder that has submitted a Bid that conforms in all material respects to the requirements in the ITB. Among other things, a Bid may be found non-responsive if the Bidder failed to provide the information requested in the Bid; fails to utilize or complete the required forms; provides incomplete,

indefinite, or ambiguous responses; fails to comply with the applicable deadlines; provides improper or undated signatures; or provides information that is false, misleading, or exaggerated. A responsible Bidder means a Bidder meets the minimum qualification requirement(s) of this ITB.

In Phase Two, the Bid Tabulation will be completed for those Bidders that are deemed responsive and responsible.

11. **QUESTIONS:** Each Bidder must examine this ITB, which incorporates all its addenda, appendices, exhibits and attachments. All questions concerning this ITB, such as technical specifications, discrepancies, omissions and exceptions to any term or condition of the ITB documents, should be submitted in writing utilizing the question / answer feature provided by BidSync at [www.bidsync.com](http://www.bidsync.com) or submitted directly to [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com). Questions of a material nature must be received prior to the Deadline for Delivery of Questions specified in the Solicitation Schedule for this ITB.

The City's response to questions and requests for information will be answered in an addendum. Material changes, if any, to the requirements, scope, specifications, or the solicitation process will be made by written addenda. Addenda will be posted and/or distributed via the City's notification methods including BidSync and the City website.

Submission of a bid will be considered evidence that the Bidder has familiarized itself with the nature and extent of the work, and the equipment, materials, and labor required. As applicable, all changes to this ITB provided via addendum will become part of any resulting Agreement.

12. **INFORMATION:** Any process questions in regard to the submission of Bids should be submitted via email to: [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com).
13. **SCOPE OF SERVICES:** The successful Bidder will provide and deliver bulk gasoline and diesel fuel that meets the specifications and requirements as stated herein.
14. **CITY'S ACCEPTANCE:** Unless otherwise specified herein, the Bidder will allow a minimum of ninety (90) days from the Due Date and Time for acceptance of its Bid by the City Manager and/or City Commission.
15. **AWARD:** The City reserves the right to waive minor defects, variations to specifications, informalities, irregularities and technicalities in any Bids, to reject any and all Bids in whole or in part, with or without cause, and/or to accept Bids that in its judgment will be for the best interest of the City.

16. **SOLICITATION SCHEDULE:**

ACTIVITY	DATE
Issue ITB	March 21, 2017
Deadline for Delivery of Questions	April 18, 2017, 5:00 P.M., ET
Due Date and Time (for delivery of Bids)	April 25, 2017, 2:00 P.M., ET
Institute Cone of Silence	April 25, 2017, 2:00 P.M., ET
Phase 1 Evaluation Complete	May 2, 2017
Phase 2 Bid Tabulation Complete	May 2, 2017

## SECTION 1: TERMS AND CONDITIONS

### 1. SUBMISSION AND RECEIPT OF BIDS:

- A. To receive consideration, Bids must be received prior to the Due Date and time as designated in this ITB.
- B. Unless otherwise specified, Bidders must complete all questions and price blanks on the forms provided in this ITB. Failure to do so may cause the Bid to be rejected. Bidders may attach supplemental information.
- C. Bids having any erasures or corrections must be initialed by Bidder in ink. Bids shall be signed in ink. All prices shall be typewritten or filled in with ink.
- D. All Bids must indicate the Bidder's name and be signed by an officer or other authorized official of having the authority to bind the Bidder by his/her signature.

### 2. BID PACKAGE: The following forms must be included with each Bid in the format specified in Section 2:

- Form 1. Bidder's Submittal Signature Page
- Form 2. Public Entity Crimes
- Form 3. Drug-Free Workplace
- Form 4. Conflict of Interest
- Form 5. Acknowledgement of Addenda
- Form 6. Schedule of Pricing

### 3. QUANTITIES OR USAGE: Whenever a bid is solicited seeking a source for a specified time for materials or services with quantities or usage shown; these quantities are estimated only. No guarantee or warranty is given or implied by the City as to the total amount that may or may not be purchased from any award resulting from this ITB. These estimated quantities are for Bidders' information only and will be used for tabulation purposes and presentation of Bids for award.

### 4. TERM OF AGREEMENT:

The Agreement, a sample of which is made part of this ITB as Appendix A, will be in full force and effect upon full execution by the City of Delray Beach. The term of the Agreement shall be for a three-year period from April 1, 2017 through March 31, 2020 with one, two-year option to renew. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

### 5. PRICING DISCOUNTS:

Bidders may offer a cash discount for prompt payment. However, such discounts will not be considered in determining the lowest net cost for bid evaluation purposes. Therefore, Bidders should reflect any discounts to be considered in the bid evaluation in the unit prices quoted.

**6. COMPLIANCE WITH SAFETY STANDARDS:**

- A. All goods delivered and/or equipment, machinery, tools, and apparatus utilized in the provision of services shall comply with all safety provisions of the Occupational Safety and Health Act (OSHA) and other applicable regulatory agencies.
- B. Whenever services include any type of on-site work or construction the successful Bidder(s) shall remove from the work site at the end of each working day all rubbish and waste debris resulting from its operations. The successful Bidder shall also secure the work site before leaving at the end of each working day.

**7. SIGNED BID CONSIDERED AN OFFER:** A signed Bid shall be considered an offer on the part of the Bidder, which offer shall be deemed accepted upon award by the City Manager and/or City Commission of the City and in case of default on the part of the Bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific non-performance.

**8. INDEMNITY/HOLD HARMLESS AGREEMENT:** Successful Bidder 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 the City, its officers, agents, servants, and employees from and against and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court cost, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, omission of, Successful Bidder, 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 proceedings is brought against the City by reason of any such claim, cause of action, or demand, Successful Bidder shall, upon notice from the City, resist and defend such lawsuit or proceedings 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 the Agreement. To the extent considered necessary by the Bidder, Administrator and the City Attorney, any sums due Successful Bidder under this Agreement may be retained by the City until all 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.

**9. LIMITATIONS ON COMMUNICATIONS -- CONE OF SILENCE:** Bidders are advised that a Cone of Silence will be in effect during this Bid. 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 Bid, between the Bidders or any Person representing the Bidders, 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 Bid, or any member of the Selection Committee. All correspondence regarding this ITB 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:



- i. Any person or person's representative seeking an award from such competitive solicitations; and
  - ii. 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.

**10. LIABILITY, INSURANCE, PERMITS AND LICENSES:** Where the successful Bidder is required to enter or go onto City property to deliver goods, materials, or perform work or services as a result of a Bid award, the successful Bidder will assume the full duty, obligation, and expense of obtaining all necessary licenses, permits, and insurance and assure all work complies with all Federal, State, Local, Palm Beach County and Delray Beach ordinances, orders, codes, laws, rules, regulations, directives, and guidelines. The successful Bidder shall be liable for any damages or loss to Delray Beach occasioned by negligence of the successful Bidder (or agent) or any person the successful Bidder has designated in the completion of the Agreement as a result of the Bid of this Bid.

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

Successful Bidder shall carry the following minimum types of insurance:

- A. Workers' Compensation: 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 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 Bidders, products and/or completed operations for Bidders, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and contractual Exclusions removed.
- D. Motor Vehicle Liability Insurance: covering all vehicles associated with Bidder's operations to include all owned, non-owned and hired vehicles. The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.
- E. Umbrella Liability Insurance or Excess Liability Insurance with limits of not less than one million (\$1,000,000) dollars may be used to reach the limits of liability required for the General Liability and the Business Automobile Policy. If applicable, the amounts specified as Contract specific will be an initial layer of coverage which will be applicable only to claims arising out of, or in connection with, the work performed or the use or occupancy of Authority premises in connection with this Contract and will not be reduced or diminished in any manner by claims resulting from other than the work performed or the use or occupancy of Authority premises in connection with this Contract. The amounts specified as total limits will be the total minimum limits required, including the initial layer.

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 as an additional insured. The Successful Bidder agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Risk Management Division.

- 11. AWARD OF BID:** The City reserves the right to accept any Bid, combination of Bids or bid alternates which, in the City's sole discretion will best serve the City's interest. The City reserves the right to reject any and all Bids, to reject any part of any Bid, to waive any and all informalities and/or irregularities, to negotiate terms with the successful Bidder, and to disregard all non-responsible, non-responsive, unbalanced or conditional Bids.

- 12. DISCREPANCIES:** Discrepancies in the multiplication of units of work and unit prices in Bidder's Bid 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.
- 13. BILLING INSTRUCTIONS:** Invoices must show the purchase order number and shall be submitted electronically to [accountspayable@mydelraybeach.com](mailto:accountspayable@mydelraybeach.com) or mailed to City of Delray Beach, ATTN: Accounts Payable, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL 33444.
- 14. TAXES:** The City is exempt from any sales tax imposed by the State of Florida. The City Sales Tax Exemption Certificate Number is **85-8012621559C-4** and appears on each purchase order
- 15. EXCEPTIONS TO CONDITIONS:** In the event Bid Specifications and Special Provisions differ from the Terms and Conditions; the Bid Specifications and Special Provisions will prevail.
- 16. TERMINATION:** The City reserves the right, in its best interest as determined by the City, to cancel the Agreement by giving written notice to the Successful Bidder thirty (30) days prior to the effective date of such cancellation. In the event of such termination, any completed services performed by the Successful Bidder under the Agreement shall, at the option of the City, become the City's property and the Successful Bidder shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City.
- 17. ANTI-COLLUSION:**
- A. Bidder certifies that its Bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Bid for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.
  - B. No premiums, rebates or gratuities permitted; either with, prior to, or after any delivery of material or provision of services. Any such violation may result in Agreement cancellation, return of materials or discontinuation of services and the possible removal from the supplier bid list(s).
- 18. CONFLICT OF INTEREST:**
- A. Bidder 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 bid or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; and
  - B. The award is subject to provisions of Florida State Statutes and City Ordinances.
- 19. CITY POLICIES:** Awarded Bidder 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.
- 20. NON-DISCRIMINATION:** The successful Bidder shall not discriminate against employees or applicants for employment because of race, color, national origin, sex, religion, age or disability, marital status, family status, sexual orientation, or gender identity or expression.

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 successful Bidder 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 successful Bidder's subcontractors and is the responsibility of the subcontractors to be in compliance.

- 21. DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory supplier list may not submit a Bid to provide goods or services to a public entity, may not submit a Bid with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not award or perform work as a Bidder, supplier, subcontractors, or consultant with any public entity, and may not transact business with any public entity.
- 22. BID PROTEST: PROTEST OF AWARD / PROTEST BOND:** Parties that are not Bidders including, but not limited to, subcontractors, material and labor suppliers, and manufacturers and their representatives shall not have standing to protest or appeal any determination made.

After the Notice of Recommendation to Award is posted, any Bidder 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 CPO by close of business on the third business day after posting (excluding the day of notification) or any right to protest is forfeited. It shall be the sole responsibility of such Bidder to verify the operating hours of City Hall. Notice of Intent to Reject all Bids is subject to the protest procedure.

**Note:** Any Bidder 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 protesting bidder's favor the entire protest bond is returned. If the protest is not decided in the protesting bidder's favor the protest bond shall be forfeited to the City. The protest bond shall be in the form of a cashier's check.

Protest shall be addressed to:  
City of Delray Beach  
Chief Purchasing Officer  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

- 23. PUBLIC RECORDS:**  
**IF THE SUCCESSFUL BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUCCESSFUL BIDDER'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. 1<sup>ST</sup> AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT [CITYCLERK@MYDELRAYBEACH.COM](mailto:CITYCLERK@MYDELRAYBEACH.COM).**

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

- A. Keep and maintain public records required by the City to perform the service.
- B. 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.
- C. 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 Bidder does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Successful Bidder or keep and maintain public records required by the City to perform the service. If the Successful Bidder transfers all public records to the City upon completion of the Agreement, the Successful Bidder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Successful Bidder keeps and maintains public records upon completion of the Agreement, the Successful Bidder 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.
- E. If the Successful Bidder 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.

**24. PUBLIC ENTITY CRIMES INFORMATION STATEMENT:** Any person or affiliate who has been placed on the convicted supplier list following a conviction for a public entity crime may not submit a Bid to provide any goods or services to a public entity, may not submit a Bid with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a Bidder, supplier, subcontractor, or consultant with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted supplier list.

**25. 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 Agreements, transactions, accounts and records. The City has entered into an Inter-local Agreement 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 Bidder, its officers,

agents, employees, and lobbyists in order to ensure compliance with Agreement specifications and detect corruption and fraud.

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

**26. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:** The City will take all necessary affirmative steps, according to 2 CFR 200.321, to assure minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Successful Bidder shall be required to take the same affirmative steps listed in 2 CFR 200.321 when using subcontractors.

**27. METHOD OF ORDERING:** A Purchase Order(s) will be issued for purchases under the agreement resulting from this ITB.

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

**29. BID BOND**

A Bid Bond is not required for this solicitation.

**30. PERFORMANCE AND PAYMENT BOND**

The Successful Bidder will execute and deliver to the City, within ten business days after notification of award, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in the amount of Fifty Thousand Dollars (\$50,000). A surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent must execute the Performance and Payment Bond. If a letter of credit is chosen, it must be in a form acceptable to the City, drawn on a bank acceptable to the City, and issued in favor of the City. Acknowledgment and agreement is given by both parties that the amount herein above set is not intended to be or shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Successful Bidder to the City in the event of a material breach of the Agreement by the Successful Bidder.

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

**31. CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- a) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708)** - Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Successful Bidder must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours.

Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or underworking conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- b) **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33U.S.C. 1251–1387), as amended** - If awarded, Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251–1387). Violations will be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- c) **Debarment and Suspension (Executive Orders 12549 and 12689)** - Any Bidder listed on the government wide exclusions in the System for Award Management (SAM), will not be eligible for award in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- d) **Byrd Anti-Lobbying Amendment (31U.S.C. 1352)** - Bidders for an award exceeding \$100,000 must file the required anti-lobbying certification. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- e) See § 200.322 Procurement of recovered materials.
- f) **Minority/Women-owned/Labor Surplus Firms’ Participation** - The City, in accordance with the requirements as stated in C.F.R. 200.321 encourages the active participation of minority businesses, women-owned business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. If subcontracts are to be let, by the successful Bidder, successful Bidder shall be required to take the affirmative steps listed in items 1 through 5 below:

1. Place qualified small and minority businesses and women-owned business enterprises on its solicitation lists;
  2. Assure that small and minority businesses, and women-owned business enterprises are solicited whenever they are potential sources;
  3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and women-owned business enterprises;
  4. Establish delivery schedules, where the requirement permits, which encourage participation by small, minority, and women-owned business enterprises;
  5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- g) **Contract Cost and Price** - City will perform a cost or price analysis in connection with this ITB prior to the Due Date and Time.
1. The City will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, contractor's investment, the amount of subcontracting, the quality of the subcontractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
  2. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under Subpart E - Cost Principles of this part.
  3. The cost plus a percentage of cost method will not be used.

[Remainder of page intentionally left blank]



## SECTION 2: BID RESPONSE

1. **MINIMUM QUALIFICATIONS:** Bidder must submit the requested information for verification it meets the following minimum qualification requirements:

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

**No documentation is required. The City will verify registration.**

- B. Bidder must have been in the business for a minimum of twenty-four (24) months prior to the Due Date and Time of this solicitation.

**Provide supporting documentation (e.g. state, county, city business license; occupational license) that confirms Bidder has been in business for a minimum of 24 months prior to the Due Date and Time.**

- C. Bidder must not be listed on the Florida Department of Management Services, Convicted Vendor List as defined in Florida Statute Section 287.133(3)(d).  
([www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists/convicted\\_vendor\\_list](http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list))

**No documentation is required. The City will verify the status.**

- D. Bidder must not be listed on the Federal Convicted Vendor list. ([www.sam.gov](http://www.sam.gov))

**Bidder submitted a completed Form 8, Debarment and Suspensions. The City will verify the status.**

- E. Bidder must not be listed on the Florida State Board of Administration, Scrutinized List of Prohibited Companies.  
(<http://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/PFIA/tabid/1478/ItemId/3354/Default.aspx>) Links – Scrutinized List of Prohibited Companies

**Bidder must submit a completed Form 9 – Scrutinized Company Certification. The City will verify the status.**

- F. Bidder must employ and/or subcontract at least three personnel who possess a Commercial Driver's License (CDL) with a HAZMAT Endorsement issued prior to the Due Date and Time for this solicitation. (<https://www.tsa.gov/for-industry/hazmat-endorsement>)

**Provide a copy of the CDL for each qualifying employee or subcontractor that clearly indicates a HAZMAT Endorsement issued prior to the Due Date and Time for this solicitation and provide supporting documentation confirming the individuals are either employees of Bidder or subcontractors of Bidder.**

- G. Bidder has no reported conflict of interests in relation to this ITB.

**Disclose the name of any officer, director or agent who is also an employee of the City. Disclose the name of any City employee who owns, directly or**

**indirectly, any interest in the Bidder's firm or any of its branches. If no conflicts of interests are present, Bidder must submit a statement to that affect.**

**2. BID FORMAT:** Bids must adhere to the following format:

Chapter 1	Letter of Intent Bidder's Statement of Organization W-9, signed and dated
Chapter 2	Minimum Qualifications Documents
Chapter 3	Form 1, Bid Submittal Signature Page Form 2, Public Entity Crimes Form 3, Drug-Free Workplace Form 4, Conflict of Interest Form 5, Acknowledgement of Addenda Form 7, Byrd Anti-Lobbying Amendment Form 8, Debarment and Suspensions Form 9, Scrutinized Company Certification
Chapter 4	Form 6, Schedule of Pricing
Chapter 5	Proof of Current Insurances

A. **Letter of Intent:** Provide a brief statement of Bidder's understanding of the services to be rendered and/or goods to be provided and a statement of Bidders commitment to perform according to the requirements stated in this ITB. Include the contact information for Bidder's primary representative during this ITB process to include name, title, phone number, email address, and mailing address. Letter should be limited to no more than two (2) pages.

B. **Bidder's Statement of Organization:** Include the following information regarding Bidder:

- i. Full legal name including any dba,
- ii. Address, City, State, Zip
- iii. Telephone number
- iv. Facsimile number
- v. E-mail address
- vi. Website URL address
- vii. Type of organization (e.g. corporation, partnership, LLC)
- viii. Federal Employer Identification Number (FEIN)
- ix. Years in business
- x. Address of corporate headquarters
- xi. Address of local office(s) (if any)
- xii. List of owners and/or partners and managers of the firm and their contact information (addresses and phone numbers)

C. **W-9:** Include a copy of Bidder's W-9, complete with full company name (as it appears on Bidder's FEIN and Florida Department of State, Division of Corporations registrations) any dba, tax classification, address and employer

identification number. W-9 must be signed by an authorized official of Bidder and dated within the past 12 months.

- D. **Insurances:** Include a copy of Bidder's current insurances as they relate to the types of insurances shown in this ITB, Section 1, Item 10.

[Remainder of page intentionally left blank]

## SECTION 3: SCOPE OF SERVICES

1. **HISTORY AND BACKGROUND:** The City has an on-going need for gasoline and diesel fuel to ensure public safety and provision of key services, especially during an emergency situation. The City has numerous vehicles, such as fire trucks, ambulances, police vehicles, and utility vehicles, as well as generators and other equipment which operate using gasoline or diesel fuel.

Delray Beach is located in Palm Beach County, Florida. It is a coastal community bordered by the cities of Boca Raton, Boynton Beach, Highland Beach, Gulfstream, and unincorporated Palm Beach County. The main roadways coming into the City are Interstate 95, Florida Turnpike, U.S. Hwy 1 and State Road A1A. Secondary routes into the City are Atlantic Avenue, Linton Road, Congress Avenue, and Military Trail. As a coastal community, the City may experience significant destruction from the impact of a hurricane, violent storms spawning tornadoes, or from other natural or man-made disasters or emergencies.

2. **DEFINITIONS:**

- i. **Data Transmission Network (DTN) FastRacks Average Price** – Fuel price published by the State of Florida, Department of Management Services that will be used as the base price to calculate daily fuel charges.  
<http://www.dms.myflorida.com/content/download/130113/808401/file/1-02-17%20DTN%20FastRacks.pdf>
- ii. **Transport Truck Delivery** – Delivery of fuel by Transport Truck with a minimum delivery of 8,000 gallons for gasoline, 7,200 gallons for diesel, and 7,200 gallons for a combination load of gasoline and diesel.
- iii. **Tank Wagon Delivery** – Delivery of fuel by Tank Wagon where maximum capacity of the fuel tank does not meet the minimum delivery of gallons specified for a Transport Truck.
- iv. **Fuel** – Any fuel type obtained through this Agreement. Fuel types shall include, but not be limited to, Unleaded E10 Gasoline, Ultra Low Sulfur No. 2 Diesel, Ultra Low Sulfur No. 2 Off-Road, Dyed Diesel, and Biodiesel.
- v. **Surcharge** – Dollar amount specified by Bidder to be added to DTN FastRacks Average Price to cover Bidder's costs and profits.
- vi. **Split Load** – Delivery from a Transport Truck which contains multiple fuel types.

3. **SCOPE:** The Successful Bidder will provide all labor and equipment associated with providing and delivering fuel to the City's fuel tanks located throughout Delray Beach for normal daily operational requirements, as well as during emergency situation or event. An emergency can be declared by the City, at its sole discretion, and may consist of natural and man-made disasters including, but not limited to, severe storms, hurricanes, wild fires, flooding, warfare, civil unrest, and terrorism.

4. **ESTIMATED FUEL QUANTITIES:** The City estimates approximately 240,000 gallons of gasoline and 102,500 gallons of diesel fuel will be purchased over the course of one year. Nearly 75% of fuel orders are estimated to utilize a Transport Truck, and the remaining 25% of fuel orders are estimated to utilize a Tank Wagon.

5. **DELIVERY LOCATIONS AND STORAGE TANK CAPACITIES:**

- i. **Public Works Department**  
434 S. Swinton Avenue  
Delray Beach, FL 33444  
(Entrance off of SW 4th Street)  
Two 5,000 gallon underground gasoline storage tanks  
One 5,000 gallon underground diesel storage tank
- ii. **Utility Maintenance Department**  
434 S. Swinton Avenue  
Delray Beach, FL 33444  
(Entrance off of SW 4th Street)  
One 2,000 gallon above ground diesel tank  
One 3,000 gallon above ground diesel tank
- iii. **Water Treatment Plant**  
201 SW 7th Street  
Delray Beach, FL 33444  
One 1,000 gallon above ground diesel tank  
One 6,000 gallon above ground diesel tank
- iv. **Fire Station No. 113**  
651 W. Linton Blvd.  
Delray Beach, FL 33444  
One 2,000 gallon above ground diesel tank
- v. **Delray Beach Police Department**  
300 W. Atlantic Ave.  
Delray Beach, FL 33444  
One 10,000 gallon underground gasoline tank  
One 1,000 gallon underground gasoline tank  
One 2,000 gallon underground diesel tank

6. **REQUIREMENTS:** The Successful Bidder shall:

- i. Deliver fuel under normal circumstances to the City within forty-eight hours of request by the City.
- ii. Deliver fuel under emergency conditions to the City within twenty-four hours of request by the City.
- iii. Provide emergency fuel to the City on a first-serve basis. For purposes of this ITB, first-serve basis means the Successful Bidder will deliver fuel to the City before delivering fuel to non-governmental entities.
- iv. Use the closest appropriate terminal for obtaining fuel.
- v. Only provide fuel from Environmental Protection Agency (EPA) registered terminals.

7. **FUEL SPECIFICATIONS:**

- i. Gasoline fuel shall meet the following specifications:  
405-220-930-7800 Gasoline E10, Unleaded, 87 Octane, conforming to Florida Department of Agriculture and Consumer Services standards 5F-2.001
- ii. Diesel fuel shall meet the following specifications:  
4405-120-260-1030 Ultra Low Sulfur Diesel Fuel, grade no. 2-D (.0015 mass % sulfur, minimum cetane index of 40) for use in over the road diesel engines, per A.S.T.M.

specification D975, conforming to Florida Department of Agriculture and Consumer Services standards 5F-2.001

8. **FAULT AND RESPONSIBILITY:** Issues related to delivery of fuel may include, but are not limited to, incorrect orders, fuel spills, delivering wrong fuel, and cross-fueling. The party at fault will be responsible for all direct costs incurred to correct any such issue.
9. **SCHEDULE AND DAMAGES:** The Successful Bidder agrees to pay any and all additional costs incurred by the City to procure fuel elsewhere if Successful Bidder fails to deliver per the requirements of this ITB, as well as reimburse the City for any out-of-pocket expenses the City directly or indirectly incurs due to Successful Bidder's failure to meet the requirements.
10. **FEDERAL AND STATE STANDARDS:** It is the intent of the City that all specifications herein are in full and complete compliance with all federal and State laws and regulations applicable to the type and class of commodity being provided. This includes, but is not limited to, Federal Motor Equipment Safety Standards (FMVSS), Occupational Safety and Health Administration (OSHA), and Environmental Protection Agency (EPA) Standards.

In addition, any federal or State legislation that becomes effective during the term of the Agreement, including any renewals, that changes such applicable laws and regulations shall immediately become a requirement of the Agreement. The successful Bidder must meet or exceed any such laws or regulatory requirements.

If an apparent conflict exists between the specifications and requirements contained herein and federal and State laws and regulations, the Successful Bidder must contact the Contract Administrator immediately. Delivery of non-conforming product may be cause for termination of the Agreement and/or suspension of Successful Bidder.

[Remainder of page intentionally left blank]

## BID SUBMITTAL CHECKLIST

A responsive Bidder means a Bidder that has submitted a bid that conforms in all material respects to the requirements in this ITB. The CPO or designee will determine whether each Bidder correctly submitted all of the necessary forms and documents. The purpose of this checklist is to assist Bidders in completing their Bids and submitting the required forms and information. **Do not include checklist with your Bid submittal.**

- ☐ Letter of Intent
- ☐ Bidder's Statement of Organization
- ☐ W-9
- ☐ Bid Submittal Signature Page
- ☐ Minimum Qualifications Documentation
- ☐ Public Entity Crimes Form
- ☐ Drug Free Workplace Form
- ☐ Conflict of Interest Form
- ☐ Acknowledgement of Addenda Form
- ☐ Schedule of Pricing Form
- ☐ Byrd Anti-Lobbying Amendment Form
- ☐ Debarment and Suspensions Form
- ☐ Scrutinized Company Certification Form
- ☐ Proof of Insurances

## **SECTION 4: FORMS FOR BID**

Each Bidder must complete and submit the forms included in this Section 4.

- Form 1. Bidder's Submittal Signature Page
- Form 2. Public Entity Crimes
- Form 3. Drug-Free Workplace
- Form 4. Conflict of Interest
- Form 5. Acknowledgement of Addenda
- Form 6. Schedule of Pricing
- Form 7. Byrd Anti-Lobbying Amendment
- Form 8. Debarment and Suspensions
- Form 9. Scrutinized Company Certification



**Form 1**  
**Bid Submittal Signature Page**

By signing this Bid, the Bidder certifies that it satisfies all legal requirements as an entity to do business with the City, including all 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: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

By signing this document, the Bidder agrees to all terms and conditions of the ITB and the resulting agreement.

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

**Form 1 – Bid Submittal Signature Page (cont'd)**  
**Signature Authority**

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

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.**

## Form 2 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 Bidders list following a conviction for a public entity crime may not submit a Bid on a Bidder to provide any goods or services to a public entity; may not submit a Bid on a Bidder with a public entity for the construction or repair of a public building or public work; may not submit Bids on leases or real property to a public entity; may not be awarded or perform work as a Bidder, supplier, sub-Bidder, or consultant under a Bidder 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 Bidders list.

Acknowledged by:

---

Firm Name (print)

---

Signature

Date

---

Printed Name and Title

### Form 3 Drug-Free Workplace

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

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

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

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

---

Firm Name (print)

---

Signature

---

Date

---

Printed Name and Title

**Form 4**  
**Conflict of Interest Disclosure Form**

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

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

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.

Select the statement below which applies to Bidder and, if applicable attach supporting information:

☐ 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 as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

Acknowledged by:

---

Firm Name (print)

---

Signature

---

Date

---

Printed Name and Title

Disclose the name of any officer, director or agent of Bidder who is also an employee of the City. Disclose the name of any City employee who owns, directly or indirectly, any interest in the Bidder's firm or any of its branches. If no conflicts of interests exist enter N/A.

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## Form 5

### Acknowledgment of Addenda

The Bidder hereby acknowledges the receipt of the following addenda, which were issued by the City and incorporated into and made part of this ITB. The Bidder acknowledges that it is solely responsible for ensuring that it is aware of, and in receipt of, all addenda.

ADDENDUM NUMBER	DATE RECEIVED

---

Bidder (firm name)

---

Signature Date

---

Printed Name and Title

## Form 6 - Schedule of Pricing

Bidder Name: \_\_\_\_\_

- A. PRICE:** Bidder must submit pricing per the requirements and specification detailed in this ITB. Pricing submitted shall be a surcharge over the DTN FastRacks Average Price for each product at the time of delivery and shall include split loads. No other charges outside of the Fee Schedule shall be permitted.

NOTE: Only pricing submitted under Other Charges and Bid Item Nos. 1, 2, 8, and 9 will be utilized during the evaluation of bids.

**a. Fee Schedule**

**i. Transport Truck Delivery**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>SURCHARGE AMOUNT</b>
1	Gasoline 405-220-930-7800 Gasoline E10, Unleaded, 87 Octane	\$ _____ per gallon
2	Diesel 4405-120-260-1030 Ultra Low Sulfur Diesel Fuel, grade no. 2-D (.0015 mass % sulfur, minimum cetane index of 40)	\$ _____ per gallon
3	Other Fuel Type (specify) _____	\$ _____ per gallon
4	Other Fuel Type (specify) _____	\$ _____ per gallon
5	Other Fuel Type (specify) _____	\$ _____ per gallon
6	Other Fuel Type (specify) _____	\$ _____ per gallon
7	Other Fuel Type (specify) _____	\$ _____ per gallon

**ii. Tank Wagon Delivery**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>SURCHARGE AMOUNT</b>
8	Gasoline 405-220-930-7800 Gasoline E10, Unleaded, 87 Octane	\$ _____ per gallon
9	Diesel 4405-120-260-1030 Ultra Low Sulfur Diesel Fuel, grade no. 2-D (.0015 mass % sulfur, minimum cetane index of 40)	\$ _____ per gallon
10	Other Fuel Type (specify) _____	\$ _____ per gallon
11	Other Fuel Type (specify) _____	\$ _____ per gallon
12	Other Fuel Type (specify) _____	\$ _____ per gallon
13	Other Fuel Type (specify) _____	\$ _____ per gallon
14	Other Fuel Type (specify) _____	\$ _____ per gallon

iii. **Other Charges (if applicable)**

Delivery fees, pump off charges, etc.

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>UNIT OF MEASURE</b>
15		\$	
16		\$	
17		\$	
18		\$	
19		\$	
20		\$	
21		\$	

**C. JOINT BIDDING, CO-OPERATIVE PURCHASING AGREEMENT:** Will extend same price, terms, and conditions of this bid to other Palm Beach, Martin and Broward County Governmental agencies?

☐ Yes

☐ No

**D. BID INFORMATION WAS OBTAINED FROM:**

☐ BidSync

☐ Newspaper Ad

☐ City Hall

☐ City Website

☐ Other (specify) \_\_\_\_\_



### Form 7 - Byrd Anti-Lobbying Amendment

By signing below, Bidder confirms that it has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352

Signature

Date

---

Printed Name and Title

---

Printed Firm Name

---

### Form 8 – Debarment and Suspension

By signing below, Bidder confirms that it **is not** listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”

Signature

Date

---

Printed Name and Title

---

Printed Firm Name

---

## Form 9 - Scrutinized Company Certification

ITB No. 2017-047  
Bulk Gasoline and Diesel Fuel

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

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

Companies must complete and return this form with its Bid.

Company.

FID or EIN No.

Address.

City.

State.

Zip.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

AGREEMENT  
BETWEEN  
THE CITY OF DELRAY BEACH  
AND

\_\_\_\_\_  
FOR  
PURCHASE AND DELIVERY OF BULK GASOLINE AND DIESEL FUEL

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 designee. 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 Agreement is in full force and effect upon full contract execution by the City of Delray Beach. The term of the Agreement shall be from April 1, 2017 through March 31, 2019 with three one-year options to renew. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

## ARTICLE 4 COMPENSATION

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

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

### 4.3 METHOD OF BILLING AND PAYMENT

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

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

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

thirty (30) days following receipt of payment of retained amounts from City.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### ARTICLE 5 INDEMNIFICATION

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

#### ARTICLE 6 INSURANCE

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

## ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board.

Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice.

This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, 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. 1<sup>ST</sup> 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.
- v. 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. 1<sup>st</sup> 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 10 PERFORMANCE AND PAYMENT BOND

Second Party will execute and deliver to the City, within ten business days after notification of award, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in total the amount of Bidder's bid amount. A surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent must execute the Performance Bond. If a letter of credit is chosen, it must be in a form acceptable to the City, drawn on a bank acceptable to the City, and issued in favor of the City.

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

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

#### ARTICLE 11 ORDER OF PRECEDENCE

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

- A. Terms and conditions as contained in this Agreement;
- B. ITB No. 2017-047, Purchase and Delivery of Bulk Gasoline and Diesel Fuel, dated March 27, 2017, and all its addenda;

- C. Second Party's response to ITB No. 2017-047, Purchase and Delivery of Bulk Gasoline and Diesel Fuel, and any subsequent information submitted by Second Party during the evaluation and negotiation process.

ARTICLE 12  
APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL  
ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- a) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where Successful Proposers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- c) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- d) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The

decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or underworking conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- g) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- h) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- i) Byrd Anti-Lobbying Amendment (31U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- j) See § 200.322 Procurement of recovered materials.
- k) MINORITY / WOMEN’S / LABOR SURPLUS FIRMS PARTICIPATION: The City, in accordance with the requirements as stated in C.F.R. 200.321 encourages the active participation of minority businesses, women’s business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. If subcontracts are to be let, through a prime contractor, that contractor is required to take the affirmative steps listed in items a through e below:
  - a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
  - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

(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:

\_\_\_\_\_  
Janice Rustin, Interim City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA  
AND

\_\_\_\_\_

SECOND PARTY

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name, Title)

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

WITNESS:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

WITNESS:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

(SEAL)

EXHIBIT A  
SCOPE OF SERVICES

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

SAMPLE



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

Bid 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:

- A. Workers' Compensation: 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 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 Bidders, products and/or completed operations for Bidders, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and contractual Exclusions removed.
- D. Motor Vehicle Liability Insurance: covering all vehicles associated with Bidder's operations to include all owned, non-owned and hired vehicles. The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.
- E. Umbrella Liability Insurance or Excess Liability Insurance with limits of not less than one million (\$1,000,000) dollars may be used to reach the limits of liability required for the General Liability and the Business Automobile Policy. If applicable, the amounts specified as Contract specific will be an initial layer of coverage which will be applicable only to claims arising out of, or in connection with, the work performed or the use or occupancy of Authority premises in connection with this Contract and will not be reduced or diminished in any manner by claims resulting from other than the work performed or the use or occupancy of Authority premises in connection with this Contract. The amounts specified as total limits will be the total minimum limits required, including the initial layer.

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 as an additional insured. The Second Party agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Risk Management Division.