



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

PURCHASING DEPARTMENT

INVITATION TO BID CONSTRUCTION

ITBC NO.: 2017-038

TITLE: ATLANTIC DUNES PAVILION & DECK (155-40)

PROJECT NO. 17-057

DUE DATE AND TIME: September 26, 2017 AT 2:00 PM

INSTRUCTIONS

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

Submission of Bids electronically will be through a secure mailbox at BidSync (www.bidsync.com) until the Due Date and Time as indicated in this ITBC. 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. Electronic submission of bids will require the uploading of forms and/or attachments as designated in this ITBC. Electronic submission must include a signed original of the Solicitation Summary form. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate file.

Bids submitted in hard copy format must be delivered to the City Hall Front Lobby Reception Desk, 100 N.W. 1st Avenue, Delray Beach, Florida 33444. Normal City business hours are 8:00 AM to 5:00 PM, Monday through Friday, except holidays. Hard copy Bid packages shall have the following information clearly marked on the face of the sealed package: Bidder's name, return address, ITBC number, Due Date for submission of Bids, and the title of the Bid. Included in the package shall be one (1) hard copy original clearly identified as the "Original" that includes a signed original of the Solicitation Summary form, one (1) duplicate hard copy, and one (1) electronic version of the Bid on a compact disc (CD) or a Universal Serial Bus (USB) drive in a usable PDF format.

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

BROADCAST

The City of Delray Beach utilizes electronic online services for notification and distribution of its Solicitation documents. The City's Solicitation information can be obtained from: (a) Purchasing webpage on the City of Delray Beach [website](#); (b) Bid Sync website – www.bidsync.com; (c) Email request to purchasing@mydelraybeach.com; (d) Hard copies are available at City Hall.

Bidders who obtain Solicitations from sources other than those named above are cautioned that the Bid package may be incomplete. The City will not evaluate incomplete Bid packages. BidSync is an independent entity and is not agent or representative of the City. Communications to Bid Sync do not constitute communications to the City. The City is not responsible for errors and omissions occurring in the transmission or downloading of any



documents, addenda, plans, or specifications from the websites. In the event of any discrepancy between information on the websites and the Solicitation documents, the terms and conditions of the Solicitation documents will prevail.

CONTACT PERSON

Any questions regarding the specifications and Solicitation process must be submitted in writing to the Purchasing Department at purchasing@mydelraybeach.com or through the "Question" feature on www.bidsync.com. Requests for clarification and additional information must be received prior to the Deadline for Submission of Questions on September 14, 2017 by 2:00 pm ET.



**The City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444**

LEGAL ADVERTISEMENT

**INVITATION TO BID CONSTRUCTION NO. 2017-038
ATLANTIC DUNES PAVILION & DECK PROJECT NO. 17-057**

The City of Delray Beach is seeking Bids from qualified Bidders to construct a pavilion and deck at Atlantic Dunes Park, in accordance with the terms, conditions, and specifications contained in this Invitation to Bid Construction. Contractor is responsible for all permitting requirements.

Invitation to Bid Construction documents are available beginning August 24, 2017 on the Purchasing webpage on the City of Delray Beach [website](#); on the Bid Sync website – www.bidsync.com; via email request to purchasing@mydelraybeach.com; via hard copy at City Hall.

Submission of Bids electronically will be through a secure mailbox at BidSync (www.bidsync.com) until the Deadline for Submission as indicated in this ITBC. Bids submitted in hard copy format must be clearly marked “INVITATION TO BID CONSTRUCTION NO. 2017-038, ATLANTIC DUNES PAVILION & DECK” and delivered to the City of Delray Beach City Hall front lobby reception desk, 100 NW 1st Ave., Delray Beach, Florida 33444. The Deadline for Submission of Bids is September 26, 2017 at 2:00 PM local time. At that time, the Bids will be publicly opened and read aloud at City Hall. Late Bids will not be accepted and will be returned to the sender unopened.

The City will hold a Pre-Bid Conference on September 12, 2017, at ESD Conference Room - located at Environmental Services Department Administration Building, 434 South Swinton Avenue, Delray Beach, Florida 33444, starting promptly at 3:00 P.M. local time. Attendance is recommended, but not mandatory.

It is the responsibility of the Bidder to ensure all pages are included in the submission. All Bidders are advised to closely examine the Solicitation package. Any questions regarding the completeness or substance of the Solicitation package or scope of work must be submitted in writing via email to purchasing@mydelraybeach.com or by using the “Question” feature on www.bidsync.com.

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

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

CITY OF DELRAY BEACH

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SECTION 1 GENERAL TERMS AND CONDITIONS

1.1 DEFINITIONS

- a. Bid: any offer(s) submitted in response to an Invitation to Bid Construction.
- b. Bidder: person or firm submitting a Bid in response to an Invitation to Bid Construction.
- c. Bid Solicitation or Invitation to Bid Construction: this Solicitation documentation, including any and all addenda.
- d. Bid Submittal Form: describes the goods or services to be purchased, and must be completed and submitted with the Bid.
- e. City: shall refer to the City of Delray Beach, Florida.
- f. Contract or Agreement: Invitation to Bid Construction, all addenda issued thereto, all affidavits, the signed agreement, and all related documents which comprise the totality of the contract or agreement between the City and the Bidder.
- g. Contractor: successful Bidder or Bidder who is awarded a contract to provide goods or services to the City.
- h. Invitation to Bid Construction: formal request for Bids from qualified Bidders.
- i. Purchasing Department: Purchasing Department of the City of Delray Beach, Florida.
- j. Responsible Bidder: Bidder which has the capability in all respects to perform in full the contract requirements, as stated in the Invitation to Bid Construction, and the integrity and reliability that will assure good-faith performance.
- k. Responsive Bidder: Bidder whose Bid conforms in all material respects to the terms and conditions included in the Invitation to Bid Construction.

1.2 CONE OF SILENCE

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

1.3 ADDENDUM

The Purchasing Department may issue an addendum in response to any inquiry received, prior to the close of the Solicitation period, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The

Bidder should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the Solicitation document or in the addenda issued. Where there appears to be a conflict between the Solicitation and any addenda, the last addendum issued shall prevail. It is the vendor's responsibility to ensure receipt of all addenda, and any accompanying documentation. The vendor is required to submit with its Bid or Bid a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

1.4 LEGAL REQUIREMENTS

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

1.5 CHANGE OF BID

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

1.6 WITHDRAWAL OF BID

A Bid shall be irrevocable unless the Bid is withdrawn as provided herein. Only a written letter received by the Purchasing Department prior to the Bid opening date may withdraw a Bid. A Bid may also be withdrawn ninety (90) days after the Bid has been opened and prior to award, by submitting a letter to the Purchasing and Contracts Director. The withdrawal letter must be on company letterhead and signed by an authorized agent of the Bidder.

1.7 CONFLICTS WITHIN THE BID SOLICITATION

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Technical Specifications, the Bid Submittal Form, or any addendum issued, the order of precedence shall be: the last addendum issued, the Bid Submittal Form, the Technical Specifications, the Special Conditions, and then the General Terms and Conditions.

1.8 PROMPT PAYMENT TERMS

It is the policy of the City of Delray Beach that payment for all purchases by City departments shall be made in a timely manner. The City will pay the awarded Bidder upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Section 218.74, Florida Statutes, the time at which payment shall be

due from the City shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager or designee, not later than sixty (60) days after the date on which the proper invoice was received by the City.

1.9 DISCOUNTS (PROMPT PAYMENTS)

The Bidder may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the lowest price during Bid evaluation. Bidders are requested to provide prompt payment terms in the space provided on the Bid submittal signature page of the Solicitation.

1.10 PREPARATION OF BIDS

- a. The Bid forms define requirements of items to be purchased, and must be completed and submitted with the Bid. Use of any other forms will result in the rejection of the Bidder's offer. The Bid submittal forms must be legible. Bidders shall use typewriter, computer, or ink. All changes must be crossed out and initialed in ink. Failure to comply with these requirements may cause the Bid to be rejected.
- b. An authorized agent of the Bidder's firm must sign the Bid submittal form. **Failure to sign the Signature Page of the Bid shall render the Bid non-responsive.**
- c. The Bidder may be considered non-responsive if Bids are conditioned upon modifications, changes, or revisions to the terms and conditions of this Solicitation.
- d. The Bidder may submit alternate Bid(s) for the same Solicitation provided that such offer is allowable under the terms and conditions. The alternate Bid must meet or exceed the minimum requirements and be submitted as a separate Bid submittal marked "Alternate Bid".
- e. When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.
- f. Late Bids will not be accepted and will be returned to the sender unopened. It is the Bidder's responsibility to ensure timely delivery by the due date and time, and at the place stated in this Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.

1.11 CANCELLATION OF BID SOLICITATION

The City of Delray Beach reserves the right to cancel, in whole or in part, any Invitation to Bid Construction when it is in the best interest of the City.

1.12 AWARD OF CONTRACT

- a. The contract may be awarded to the responsive and responsible Bidder meeting all requirements as set forth in the Solicitation. The City reserves the right to reject any and all Bids, to waive irregularities or technicalities, and to re-advertise for all or any part of this Bid Solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.
- b. The City reserves the right to reject any and all Bids if it is determined that prices are excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.
- c. The City reserves the right to negotiate prices **with the responsive and responsible low Bidder**, provided that the scope of work of this Solicitation remains the same.
- d. The Bidder's performance as a prime contractor or subcontractor on previous City contracts shall be taken into account in evaluating the Bid received for this Bid Solicitation.
- e. The City will provide a copy of the Bid Tabulation to all Bidders responding to this Solicitation.
- f. The Bid Solicitation, any addenda and/or properly executed modifications, the signed Agreement, the purchase order, and any change order(s) shall constitute the contract.
- g. The Purchasing Director will decide all tie Bids.
- h. Award of this Bid may be predicated on compliance with and submittal of all required documents as stipulated in the Bid Solicitation.
- i. The City reserves the right to request and evaluate additional information from any Bidder after the submission deadline as the City deems necessary.

1.13 CONTRACT EXTENSION

The City reserves the right to automatically extend any agreement for a maximum period not to exceed ninety (90) calendar days in order to provide City departments with continual service and supplies while a new agreement is being solicited, evaluated, and/or awarded.

1.14 WARRANTY

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

- 1.15 **ESTIMATED QUANTITIES**
Estimated quantities or dollars are for Bidder's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City may use these estimates to determine the low Bidder. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for the given amount subsequent to the award of this Bid Solicitation.
- 1.16 **NON-EXCLUSIVITY**
It is the intent of the City to enter into an agreement with the awarded Bidder that will satisfy its needs as described herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to, award of other contracts, use of any contractor, or perform the work with its own employees.
- 1.17 **CONTINUATION OF WORK**
Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the successful Bidder, continue until completion at the same prices, terms, and conditions.
- 1.18 **BID PROTEST**
A recommendation for contract award or rejection of award may be protested by a Bidder. The Bidder may file a written protest with the City Clerk's office. The Bidder shall file its written protest with the City Clerk, Monday through Friday, between the hours of 8:00 AM and 5:00 PM, excluding legal holidays. Protests shall contain the name, address, and phone number of the petitioner, name of the petitioner's representative (if any), and the title and Bid number of the Solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest, and the action requested from the City.
- The written protest must be received no later than seventy-two (72) consecutive hours (excluding Saturdays, Sundays, and legal holidays) after the time of award posting. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Bidder of all rights of protest.
- In the event of a timely protest, the City will not proceed further with award of the contract and agreement until all administrative remedies are exhausted, or until the City Manager determines the award of the contract is immediately necessary to protect the public health, welfare, or safety.
- 1.19 **LAWS AND REGULATIONS**
The awarded Bidder shall comply with all laws and regulations applicable to provide the goods or services specified in this Bid Solicitation. The Bidder shall be familiar with all federal, state, and local laws that may affect the goods and/or services offered.
- 1.20 **LICENSES, PERMITS AND FEES**
The awarded Bidder(s) shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or an awarded Bidder for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the awarded Bidder.
- 1.21 **SUBCONTRACTING**
Unless otherwise specified in this Bid Solicitation, the successful Bidder shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City may result in termination of the contract for default.
- 1.22 **ASSIGNMENT**
The awarded Bidder shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the City. Assignment without the prior consent of the City may result in termination of the contract for default.
- 1.23 **SHIPPING TERMS**
Unless otherwise specified in the Bid Solicitation, prices quoted shall be F.O.B. Destination. Freight shall be included in the proposed price.
- 1.24 **RESPONSIBILITIES AS EMPLOYER**
The employee(s) of the awarded Bidder shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments. The awarded Bidder shall provide physically competent employee(s) capable of performing the work as required. The City may require the awarded Bidder to remove any employee it deems unacceptable. All employees of the awarded Bidder shall wear proper identification.
- It is the awarded Bidder's responsibility to ensure that all its employees and subcontractors comply with the employment regulations required by the US Department of Homeland Security. The City shall have no responsibility to check or verify the legal immigration status of any employee of the awarded Bidder.
- 1.25 **INDEMNIFICATION**
The awarded Bidder shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense,

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

1.26 COLLUSION

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

1.27 MODIFICATION OF CONTRACT

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

1.28 TERMINATION FOR CONVENIENCE

The City, at its sole discretion, reserves the right to terminate any contract entered into pursuant to this Invitation to Bid Construction (ITBC) with or without cause

immediately upon providing written notice to the awarded Bidder. Upon receipt of such notice, the awarded Bidder shall not incur any additional costs under the contract. The City shall be liable only for reasonable costs incurred by the awarded Bidder prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

1.29 TERMINATION FOR DEFAULT

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

1.30 FRAUD AND MISREPRESENTATION

Any individual, corporation, or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The City, as a further sanction, may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

1.31 ACCESS AND AUDIT OF RECORDS

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

1.32 OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present, and proposed County programs, contracts, transactions, accounts and records. The Inspector

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

1.33 PRE-AWARD INSPECTION

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

1.34 PROPRIETARY AND/OR CONFIDENTIAL INFORMATION

Bidders are hereby notified that all information submitted as part of, or in support of Bid submittals will be available for public inspection after the opening of Bids in compliance with Chapter 119 of the Florida Statutes, popularly known as the "Public Record Law." The Bidder shall not submit any information in response to this Solicitation which the Bidder considers to be a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection which would otherwise be available to the Bidder. In the event that the Bidder submits information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Bid as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Bidder in writing in an effort to obtain the Bidder's withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Bidder as quickly as possible, and if appropriate, evaluate the balance of the Bid. The redaction or return of information pursuant to this clause may render a Bid non-responsive.

1.35 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

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

- a. Use of information only for performing services required by the contract or as required by law;
- b. Use of appropriate safeguards to prevent non-permitted disclosures;
- c. Reporting to the City of Delray Beach any non-permitted use or disclosure;
- d. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the

Bidder and reasonable assurances that IIHI/PHI will be held confidential;

- e. Making Protected Health Information (PHI) available to the customer;
- f. Making PHI available to the customer for review and amendment, and incorporating any amendments requested by the customer;
- g. Making PHI available to the City of Delray Beach for an accounting of disclosures; and
- h. Making internal practices, books, and records related to PHI available to the City of Delray Beach for compliance audits.

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

1.36 ADDITIONAL FEES AND SURCHARGES

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

1.37 COMPLIANCE WITH FEDERAL STANDARDS

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

1.38 COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING

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

1.39 BINDING EFFECT

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

1.40 SEVERABILITY

The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is

specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement. A non-appropriation event shall not constitute a default or breach of said contract or agreement by the City.

background check by accessing any Federal, State, or local law enforcement database available. The contract employee or Bidder will be required to sign an authorization for the City to access criminal background information. The costs for the background checks shall be borne by the City.

1.41 GOVERNING LAW AND VENUE

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

1.46 LABOR, MATERIALS, AND EQUIPMENT

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

1.47 MINIMUM WAGE REQUIREMENTS

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

1.42 ATTORNEY'S FEES

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

1.48 PACKING SLIP AND DELIVERY TICKET

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

1.43 EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

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

1.49 PURCHASE OF OTHER ITEMS

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

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

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

1.50 PUBLIC RECORDS

Florida law provides that municipal records shall at all times be available to the public for inspection. Chapter 119, Florida Statutes, the Public Records Law, requires that all material submitted in connection with a Bid response shall be deemed to be public record subject to public inspection upon award, recommendation for award, or thirty (30) days after Bid opening, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes. If the Bidder believes any of the information contained in his/her/its Bid is considered confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and is exempt from the Public Records Law, then the Bidder, must in its response, specifically identify the material which is deemed to be exempt and state the legal authority for the exemption. All materials that qualify for exemption from Chapter 119, Florida Statutes or other applicable law must be submitted in a separate envelope, clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE" with the firm's name and the Bid number clearly marked on the outside. The City

1.44 AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS

It is agreed and understood that any City department or agency may access this contract and purchase the goods or services awarded herein. Each City department will issue a separate purchase order to the awarded Bidder for the department's specific purchases.

1.45 CRIMINAL HISTORY BACKGROUND CHECKS

Prior to hiring a contract employee or contracting with a Bidder, the City may conduct a comprehensive criminal

will not accept Bids when the entire Bid is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Bidder agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.

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

1.51 CONFLICTS OF INTEREST

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

1.52 PUBLIC ENTITY CRIMES

As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted vendors list following a conviction for a public entity crime may not submit a Bid on a contract to provide any goods or services to a public entity; may not submit a Bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit Bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

1.53 OTHER GOVERNMENTAL AGENCIES

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

1.54 COMPLETION OF WORK AND DELIVERY

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

1.55 FAILURE TO DELIVER OR COMPLETE WORK

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

1.56 CORRECTING DEFECTS

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

1.57 ACCIDENT PREVENTION AND BARRICADES

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

1.58 OMISSIONS IN SPECIFICATIONS

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

1.59 MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

The awarded Bidder hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the awarded Bidder in conjunction with this Solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the

City by the awarded Bidder are found to be defective or do not conform to specifications, (1) the materials may be returned to the awarded Bidder at the Bidder's expense and the contract cancelled; or (2) the City may require the awarded Bidder to replace the materials at the Bidder's expense.

1.60 TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS

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

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

1.61 TAXES

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

1.62 BIDDER'S COSTS

The City shall not be liable for any costs incurred by Bidders in responding to this Invitation to Bid Construction.

1.63 SUBSTITUTION OF PERSONNEL

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

1.64 FORCE MAJEURE

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

- a. The non-performing party gives the other party prompt written notice describing the particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.
- c. No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.
- d. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the awarded Bidder shall not constitute a force majeure. The term of the contract shall be extended by a period equal to that during which either party's performance is suspended under this section.

1.65 NOTICES

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

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

1.66 POOL CONTRACTS

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

1.67 FISCAL FUNDING OUT

The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is

specifically contingent upon the lawful appropriation of
funds. Failure to lawfully appropriate funds for any contract

or agreement awarded shall result in automatic termination
of the contract or agreement.

END OF SECTION 1

SECTION 2

SPECIAL TERMS AND CONDITIONS

2.1 PURPOSE

The purpose of this Solicitation is to establish a contract for the construction of a pavilion and deck at Atlantic Dunes Park, in accordance with the terms, conditions, and specifications contained in this Invitation to Bid Construction.

2.2 CONTRACT MEASURES AND PREFERENCES

Intentionally Omitted

2.3 PRE-BID CONFERENCE AND SITE VISIT

The City will hold a Non-Mandatory Pre-Bid Conference on September 12, 2017, starting promptly at 3:00 P.M. EST, at Environmental Services Department Administration Building, 434 South Swinton Avenue, Delray Beach, Florida 33444.

The City will not conduct a site visit for this solicitation.

Potential Bidders should bring a copy of this Solicitation with them to the Pre-Bid Conference. Bidders will be allowed to ask questions and obtain information on important aspects of this Solicitation.

The purpose of the Pre-Bid Conference is to provide and obtain information relative to the scope, purpose, nature, and extent of the work, and any local conditions, which may affect the performance of work. Submission of a Bid shall constitute an acknowledgement by the Bidder that it has thoroughly examined and is familiar with the requirements of this Solicitation package. The failure or neglect of the Bidder to examine the Solicitation package, shall in no way relieve the Bidder of any obligation with respect to its Bid or the requirements of the Contract. No claim for additional compensation will be allowed which is based on a lack of knowledge of the requirements of this Solicitation package or the resultant Contract.

If you need a sign language interpreter or materials in accessible format for this event, please contact the Purchasing Department at purchasing@mydelraybeach.com or by phone at 561.243.7129 at least five (5) days in advance of the conference.

2.4 AGREEMENT PERIOD

The Contract shall commence upon the date of the duly executed Agreement, and shall remain in effect until such time as the construction services acquired in conjunction with this Invitation to Bid, have been completed and accepted by the City's authorized representative and upon completion of the expressed and/or implied warranty periods.

2.5 OPTIONS TO RENEW

Intentionally Omitted

2.6 METHOD OF AWARD: LOWEST PRICE

The City will award this contract to the responsive and responsible Bidder who submits the lowest price to perform the work, based on the option (alternates) selected by the City.

2.7 PRICES SHALL BE FIXED AND FIRM

If the Bidder is awarded a contract under this Solicitation, the prices offered by the Bidder, as shown in Exhibit A, attached hereto and incorporated by this reference, shall be fixed and firm for the performance of the Work, except for any change orders or variations, which must meet the prior approval and authorization of the City.

2.8 PRICE ADJUSTMENTS

Intentionally Omitted

2.9 EXAMINATION OF CITY FACILITIES OR EQUIPMENT

Prior to submitting its offer, it is recommended that the Bidder visit the site of the proposed work and become familiar with any conditions which may in any manner affect the work to be done or affect the equipment, materials and labor required. The Bidder is also advised to examine carefully any drawings, specifications, or equipment, and become thoroughly aware regarding any and all conditions and requirements that may in any manner affect the work to be performed under the Contract. No additional allowances will be made because of lack of knowledge of these conditions.

2.10 EQUAL PRODUCTS

Intentionally Omitted

2.11 LIQUIDATED DAMAGES

Time is of the essence regarding this Invitation to Bid Construction and the work contemplated hereunder and the City may suffer financial loss and inconvenience if the work is not completed to the satisfaction of the City by the time stipulated in the Contract. Therefore, failure to timely complete the work shall result in the awarded Bidder being subject to liquidated damages, but not as penalty, in the amount of amount of .1% of the Guaranteed Maximum Price for each and every calendar day the work remains incomplete or the items remain undelivered. As compensation due the City for loss of use and for additional costs incurred by the City due to such non-completion of the work, the City shall have the right to deduct the liquidated damages from any amount due, or that may become due to the awarded Bidder under the Contract, or to invoice the awarded Bidder for such damages if the costs incurred exceed the amount due to the awarded Bidder. The awarded Bidder and the City agree that the amount for liquidated damages is not punitive, and is intended to compensate the City for difficult to quantify losses.

2.12 INSURANCE

The awarded Bidder shall not commence any performance pursuant to the terms of this Solicitation until certification or proof of insurance has been received by the Purchasing Department and approved by the City's Risk Management Division.

The required insurance coverage is to be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of A- VIII or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does

not constitute a waiver of the awarded Bidder's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

The awarded Bidder must submit a current Certificate of Insurance, naming the City of Delray Beach as an additional insured and list as such on the insurance certificate. New certificates of insurance are to be provided to the City upon expiration.

The awarded Bidder shall provide insurance coverage as follows, and shall carry:

- a. Workers' Compensation Insurance – as required by law.
- b. Employer's Liability Insurance - \$1,000,000 per occurrence, \$1,000,000 for each disease, and \$1,000,000 for aggregate disease
- c. Comprehensive General Liability Insurance – with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage which must include:
 - i. Premises and/or Operations on an occurrence basis.
 - ii. Independent contractors.
 - iii. Products and/or Completed Operations Liability on an occurrence basis.
 - iv. Explosion, Collapse, and Underground Coverages.
 - v. Broad Form Property Damage.
 - vi. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
 - vii. Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
- d. Builders Risk / Installation Floater – The awarded Bidder shall take out and maintain, as applicable, during the life of this Contract, "all risk" type builders risk insurance satisfactory to the City for the completed value of the Project, which shall protect the awarded Bidder and the City as their interests may appear, for the following hazards to the work, encompassing structures in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said structures, as well as materials and equipment suitably stored at the site and awarded Bidder's construction equipment, materials, and temporary structures:
 - i. Fire and lightning, vandalism, and malicious mischief
 - ii. Extended coverage including windstorm, hail, flood, explosion, riot, civil commotion, aircraft, vehicle, and smoke damage
- e. Professional Liability – To include coverage for contractor pollution exposure, with minimum limits of \$1,000,000 per claim and in the aggregate.
- f. Business Automobile Liability – With minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

City shall be named as an Additional Insured on both the General Liability and Business Automobile Liability policies, on a primary and non-contributory basis, to include additional insured status on the GL policy for both premises operations and products and completed operations.

If no deductible for insurance is referenced above, the City reserves the right to require such deductibles which shall be determined by the Risk Management Division, but not more than \$25,000 per claim.

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

2.13 PERFORMANCE BOND AND CONSTRUCTION BOND

The Bidder to whom a contingent award is made shall duly execute and deliver to the City a Performance Bond and a Construction Bond, both in an amount equal to 110% of the total contract price, payable to the City, as surety for faithful performance under the terms and conditions of the contract. The Performance Bond and Construction Bond shall be delivered to the City contemporaneously with contract execution. The bonds shall be substantially in the format of the examples that are a part of this Solicitation.

Both required Bonds must be executed by a surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent. Bonds may not be canceled, terminated, or revised unless the City has been provided with thirty (30) days' advanced written notice of such action by the surety. The surety must insert the registered agent to accept service of process in the State of Florida, directly on each bond document.

Acknowledgement and agreement is given by both parties that the performance and construction bonds do not limit the liability of the awarded Bidder to the City in the event of a material breach of the contract agreement by the awarded Bidder. The bonds may be used to recover liquidated damages on behalf of the City.

If the awarded Bidder fails to deliver the bonds at the same time as contract execution, the City may declare the awarded Bidder in default of the contractual terms and conditions, and the awarded Bidder shall surrender any bid bond, and the City shall not accept any offers or bids from that Bidder for a twelve (12) month period following such default.

2.14 CERTIFICATIONS

Any Bidder that submits an offer in response to this Solicitation shall, at the time of such offer, hold all necessary certifications issued by the State or County Examining Board qualifying the Bidder to perform the work proposed for this project. If other professions or trades are required in conjunction with this Solicitation and such work/services will be performed or

provided by a subcontractor(s), an applicable Certificate of Competency issued to the subcontractor(s) shall be submitted with the Bidder's offer; provided, however, that the City may at its option and in its best interest allow the Bidder to supply the subcontractor(s) certificate to the City during the evaluation period.

All architects or engineers on this project must possess current Florida professional registrations or licenses for the architectural and engineering services which they intend to provide.

2.15 METHOD OF PAYMENT: INVOICE FOR COMPLETED WORK (PROGRESS PAYMENTS)

The awarded Bidder shall submit an invoice to the City for progress payments for work that has been completed, and has been inspected and accepted by the City. The date of the invoices shall not exceed thirty (30) calendar days from the completion of that portion of the work. Under no circumstances shall the invoice be submitted to the City in advance of the completion and acceptance of the work. The invoice shall contain the following basic information: the awarded Bidder's name and address, invoice number, date of invoice, description of the goods or service, the contract number, purchase order number, and any discounts.

The City will allow progress payments for the work to be performed under this contract. Such progress payments shall be only for work that has been completed and verified by the City.

The City prides itself on paying its vendors promptly and efficiently, and as such requires that vendors accept payment via wire transfer, ACH (direct deposit), or an appropriate electronic payment method. The City is averse to issuing paper checks and seeks to discontinue this practice. All payments shall be made in accordance with the Florida Prompt Payment Act, Section 218.74, Florida Statutes, upon presentation of a proper invoice by the awarded Bidder.

2.16 COMPLETION OF WORK FROM DATE OF PURCHASE ORDER

The Bidder shall state in its offer the number of calendar days from the date of the Notice to Proceed in which it will guarantee to complete the Work.

2.17 WARRANTY REQUIREMENTS: ONE (1) YEAR

In addition to all other warranties that may be supplied by the Bidder, the awarded Bidder shall warrant its products and/or service against faulty labor and/or defective material, for a minimum period of one (1) year from the date of acceptance of the labor, materials and/or equipment by the City. This warranty requirement shall remain in force for the full period; regardless of whether the awarded Bidder is under contract with the City at the time of defect. Any payment by the City on behalf of the services received from the awarded Bidder does not constitute a waiver of these warranty provisions.

2.18 ADDITIONAL FACILITIES OR PRODUCTS

Intentionally Omitted

2.19 CATALOGS AND PRICE LISTS

Intentionally Omitted

2.20 CLEAN UP

The awarded Bidder shall remove all unusable materials and debris from the work areas at the end of each workday, and dispose of the same in an appropriate manner. Upon final

completion, the awarded Bidder shall thoroughly clean up all areas where work has been involved.

2.21 DEMONSTRATION OF EQUIPMENT
Intentionally Omitted

2.22 HOURLY RATE
Intentionally omitted

2.23 MOTOR VEHICLE LICENSE REQUIREMENT
Intentionally Omitted

2.24 PATENTS AND ROYALTIES

The awarded Bidder, without exception, shall indemnify and hold harmless the City and its employees from liability of any nature or kind, including cost and expenses for, or as a result of, any copyrighted, patented, or unpatented invention, process, or article manufactured by the awarded Bidder. The awarded Bidder has no liability when such claim is solely and exclusively due to the combination, operation, or use of any article supplied hereunder with equipment or data not supplied by awarded Bidder, or is based solely and exclusively upon the City's alteration of the article. The City will provide prompt written notification of a claim of copyright or patent infringement.

Further, if such a claim is made or is pending, the awarded Bidder may, at its option and expense, procure for the City the right to continue use of, replace or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, the City agrees to return the article on request to the awarded Bidder and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.) If the awarded Bidder uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the contract prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

2.25 PRE-CONSTRUCTION CONFERENCE

The awarded Bidder is required to attend a Pre-Construction Conference with City staff designated to represent the City prior to the construction or performance of the work specified in this Solicitation. The location of this construction conference will be within the municipal boundaries of the City of Delray Beach. All costs incurred by the awarded Bidder in conjunction with the pre-construction conference shall be borne by the awarded Bidder.

2.26 RELEASE OF CLAIM REQUIRED

Pursuant Section 255.05, *Florida Statutes* all payments to the subcontractors shall be made by the awarded Bidder within ten (10) days of receipt of the partial payment from the City. With the exception of the first partial payment, the awarded Bidder must pay all of its subcontractors and suppliers who have performed any work or supplied any materials for the project within ten (10) days after receipt of the partial payment by the awarded Bidder for monies due such subcontractors and suppliers as a result of a percentage of the work completed. The awarded Bidder must provide the City's project manager with duly executed affidavits (subcontractor's statement of satisfaction) or releases of claim from all subcontractors and suppliers who have performed any work or supplied any materials for on the project as of that date. The affidavit or

releases shall certify that said subcontractors and suppliers have been paid their proportionate share of all previous partial payments to the awarded Bidder. In the event such affidavits cannot be furnished, the awarded Bidder may submit an executed consent of surety to requisition payment, identifying the subcontractors and suppliers with the amounts for which the statement of satisfaction cannot be furnished. If the awarded Bidder fails to provide consent of surety to requisition payment, the amount in dispute will be withheld until either the statement of satisfaction is furnished, or the consent of surety to requisition payment is furnished.

2.27 SUBCONTRACTORS OF WORK SHALL BE IDENTIFIED

As part of its Bid, the Bidder must identify any and all subcontractors that will be used in the performance of the proposed work, their capabilities and experience, and the portion of the work to be done by the subcontractor. The competency of the subcontractor(s) with respect to experience, skill, responsibility and business standing shall be considered by the City when making the award in the best interest of the City. If the Bidder fails to identify any and all subcontractors in the Bid, the Bidder may be allowed to submit this documentation during the Bid evaluation period, if such action is in the best interest of the City.

2.28 CHANGES

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If such changes increase or decrease the amount due under the contract, or the time required for performance of the work, an equitable adjustment shall be authorized by Change Order.

The City may, at any time make changes in the details of the Work. The selected proposer shall proceed with the performance of any changes in the work so ordered by the City, unless the selected proposer believes that such changes entitles it to a change in the contract price or time, or both, in which event the selected proposer shall give the City immediate written notice thereof after the receipt of the ordered change. Thereafter, the selected proposer shall document the basis for the change in contract price or time within ten (10) calendar days. All changes resulting in a request for added time must be accompanied by a Time Impact Analysis.

Changes in the scope of work may be accomplished by change order, construction change directive, or field order. Any one of these documents shall be interpreted as further instruction from the City.

A change order shall be based upon agreement between the City and the selected proposer; a construction change directive may or may not be agreed to by the selected proposer; a field order for a minor change in the work may be issued by the City.

Changes in the work shall be performed under applicable provisions of the contract documents, and the selected proposer shall proceed promptly, unless otherwise provided in the change order, construction change directive, or field order.

A change order will be prepared and signed by the City and selected Bidder, stating their agreement upon all of the following:

- a. a change in the scope of work;

- b. the amount of the adjustment in the contract price, if any; and
- c. the extent of the adjustment in the contract time, if any.

The issuance of a change order shall be full and final settlement for any issue or item addressed in the change order. No change order will be accepted or processed with any "reservation of rights" notations or clauses.

2.29 FAILURE TO DELIVER OR COMPLETE WORK

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

2.30 CORRECTING DEFECTS

The awarded Bidder shall be responsible for promptly correcting any deficiency, at no cost to the City, within three (3) calendar days after the City notifies the awarded Bidder of such deficiency in writing. If the awarded Bidder fails to correct the defect, the City may procure the products or services from another source and charge the awarded Bidder for any additional costs that are incurred by the City for this work or items; either through a credit memorandum or through invoicing.

2.31 ACCIDENT PREVENTION AND BARRICADES

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

2.32 OMISSIONS IN SPECIFICATIONS

The Statement of Work or description of items contained within this Solicitation describes the various work requirements deemed necessary for the completion of the project. Any omissions of inherent technical functions or classes of work within the Specifications and/or Statement of Work shall not relieve the awarded Bidder from furnishing, installing or performing such work where required to the satisfactory completion of the project.

2.33 MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

The awarded Bidder hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the awarded Bidder in conjunction with this Solicitation and resultant Contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the City by the awarded

Bidder are found to be defective or do not conform to specifications: (1) the materials may be returned to the awarded Bidder at the awarded Bidder's expense and the Contract cancelled or (2) the City may require the awarded Bidder to replace the materials at the awarded Bidder's expense.

2.34 TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS

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

Accordingly, the awarded Bidder performing under this Contract is required to provide two (2) complete sets of Material Safety Data Sheets to the City for any products that are subject to these regulations. This information shall be provided at the time when the initial delivery is made, on a product by product basis.

END OF SECTION 2

SECTION 3

SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

3.1 SCOPE

The awarded Bidder shall provide all labor, equipment, materials, and other operations to construct a pavilion and deck at Atlantic Dunes Park. The City estimates the total costs to construct this project will not exceed \$200,000.

3.2 REQUIREMENTS

- A. Working hours for this project shall be:
 - (a) 7:30 a.m. ET to 5:00 p.m. ET Monday through Friday
 - (b) 7:30 a.m. ET to 5:00 p.m. ET Saturday, if requested and approved by City
- B. Inspections shall be requested two business days in advance. The City will not charge for inspections during regular business hours, subject to the provisions of subsection 3.4 herein below.
- C. The awarded Bidder shall be responsible for performing all required site preparation tests, surveys, and studies to prepare the site for the construction of the building shell.

3.3 SPECIFICATIONS, PLANS AND DRAWINGS

Awarded Bidder shall construct the pavilion and deck at Atlantic Dunes Park per the Specifications, plans, drawings and other documents contained in this ITBC including the following:

Exhibit B, Specifications
Exhibit C, Drawings & Plans

3.4 PERMIT FEES

The awarded Bidder(s) shall obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or an awarded Bidder for failure to obtain and maintain required permits, and/or inspections shall be borne by the awarded Bidder. To the extent that any permits and/or inspections must be issued or conducted by the City, such costs/expenses associated there with shall be waived. Notwithstanding the foregoing, if the City is required to perform re-inspections and/or inspections outside of normal business hours, the City reserves the right to deduct the cost of such inspections from the final contract price.

3.5 PROJECT TIMELINE

The awarded Bidder shall agree to complete the work no later than February 28, 2018. The City, at its discretion may allow for time extensions for unforeseen and unexpected delays. Work shall be completed within one hundred twenty (120) calendar days of the date when the Contract Time commences. Additionally, all timber pile removal and installation shall be completed within sixty (60) days from the date the Contract Time commences but no later than February 28, 2018, whichever date is sooner.

END OF SECTION 3

BID SUBMITTAL

This page and all following pages comprise your original Bid Submittal package. Please also attach any additional information or documentation requested in this Invitation to Bid Construction. There is no need to include the preceding Sections 1, 2, and 3 in your Bid Submittal package.

INSTRUCTIONS

Sealed Bids must be received on or before the due date and time (local time) via electronic submission at www.bidsync.com or at the City of Delray Beach City Hall Front Lobby Reception Desk, 100 N.W. 1st Avenue, Delray Beach, Florida 33444. Normal City business hours are 8:00 AM to 5:00 PM, Monday through Friday, except holidays. **All Bids will be publicly opened** at City Hall unless otherwise specified.

Each hard copy Bid submitted to the City shall have the following information clearly marked on the face of the envelope: Bidder's name, return address, ITBC number, due date for Bids, and the title of the Bid. Included in the package shall be one (1) hard copy original clearly identified as the "Original" that includes a signed original of the Solicitation Summary, one (1) duplicate hard copy, and one (1) electronic version of the Bid on a compact disc (CD) or a Universal Serial Bus (USB) drive in a usable PDF format. If the Solicitation Summary is not included in the package as a hard copy, the City may deem the Bid non-responsive. Bids must contain all information required to be included in the submittal, as described in this Solicitation.

Invitation to Bid No.: 2017-038

Title: Atlantic Dunes Pavilion & Deck

Due Date and Time: September 26, 2017 @ 2:00 PM local time

Name of Bidder

SECTION 4
PRICING SCHEDULE

4.1 PRICES AND RATES

The Bidder shall indicate on Exhibit A, the firm and fixed prices and rates offered to the City for the work described in this Solicitation, including any Alternates.

4.2 COMPLETION

Bidder shall indicate the number of days for final completion of the scope of work in this ITBC from the date of Notice to Proceed in the space below.

Bidder agrees that the work will be finally complete within _____ days from the date of Notice to Proceed.

Signature

Date

Printed Name and Title

END OF SECTION 4

SECTION 5 MINIMUM QUALIFICATIONS

Each bidder shall submit the information and documentation requested below that confirms it meets the following qualification requirement(s). For the purposes of this ITBC, a responsible Bidder is a Bidder that meets the minimum qualification requirements.

- A. Must have been in the business of for a minimum of thirty-six (36) months prior to the Due Date and Time. **Provide supporting documentation (e.g. state, county, city business license; occupational license) that confirms Bidder has been in business for a minimum of thirty-six months prior to the Due Date and Time.**
- B. Bidder must have experience in constructing a minimum of three projects since August 1, 2012 that each included a minimum of two of the following components: (1) construction of a pavilion with roof, (2) construction of a deck platform with benches, (3) installation of driven timber piles, (4) demolition, and/or (5) professional video, photography, documentation survey. **Provide the following information for the three (3) qualifying projects:**
 - i. Name of project owner
 - ii. Contact name
 - iii. Contact email
 - iv. Location / address of project
 - v. Dates of project (start/end)
 - vi. Brief description of project
 - vii. List of the components of the project as stated above
- C. Bidder must hold a Florida State General Contractor's license and a current certificate of competency issued by Palm Beach County Examining Board having jurisdiction over licensing of Contractors in the type of work involved in this contract. **Provide proof, in the form of a copy of license(s), that the Proposer and/or subcontractor is: Certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent and certificate of competency issued by Palm Beach County.**
- D. Bidder has no reported conflict of interests in relation to this ITBC. **No additional documentation is required. The City will verify from Bidder's Form 4, Conflict of Interest.**
- E. Provide proof that proposer is registered with the States of Florida, Division of corporations to do business in Florida. **No documentation is required. The City will verify.**
- F. Bidder has previously provided satisfactory services for the type of work identified in this ITBC.
The City will conduct a due diligence survey of internal resources and Bidder's client references to verify this information. Submit five client references for whom Bidder has provided construction services in the past five years and who are agreeable to respond to a request from the City regarding bidder's experience. Each client reference should include the following:
 - a. Organization name

- b. Contact name(s)**
- c. Contact email address**
- d. Address**
- e. Telephone and fax numbers**
- f. Dates of service (start/end)**
- g. Type of work (brief description)**

END OF SECTION 5

SECTION 6
ACKNOWLEDGEMENT OF ADDENDA

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

PART I:

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

Addendum #1, Dated _____

Addendum #2, Dated _____

Addendum #3, Dated _____

Addendum #4, Dated _____

Addendum #5, Dated _____

Addendum #6, Dated _____

Addendum #7, Dated _____

Addendum #8, Dated _____

PART II:

☐ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS SOLICITATION

Firm Name

Signature

Name and Title (Print or Type)

Date

SECTION 7
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 Conflict of Interest and Code of Ethics provisions.

Firm Name:

Street Address:

Mailing Address (if different than Street Address):

Telephone Number(s): _____

Fax Number(s): _____

Email Address: _____

Federal Employer Identification Number: _____

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

Signature: _____

(Signature of authorized agent)

Print Name: _____

Title: _____

By signing this document, the Bidder agrees to all Terms and Conditions of this Solicitation and the resulting Contract/Agreement.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF BIDDER TO BE BOUND BY THE TERMS OF ITS OFFER, FOR NOT LESS THAN 90 DAYS, AND THE BIDDER'S UNEQUIVOCAL OFFER TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS INVITATION TO BID CONSTRUCTION. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE, BY AN AUTHORIZED REPRESENTATIVE, 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 OFFER.

SECTION 8

AFFIDAVITS, PERFORMANCE AND PAYMENT BONDS FORMAT, LETTER OF CREDIT FORMAT

8.1 AFFIDAVITS

The forms listed below must be completed by an official having legal authorization to contractually bind the company or firm. Each signature represents a binding commitment upon the Bidder to provide the goods and/or services offered to the City if the Bidder is determined to be the lowest responsive and responsible Bidder.

- a. Bid Submittal Signature Page
- b. Acknowledgement of Addenda
- c. Conflict of Interest Disclosure Form
- d. Notification of Public Entity Crimes Law
- e. Notification of Public Records Law
- f. Drug-Free Work Place
- g. Non-Collusion Affidavit
- h. Sample Performance Bond Format (if required, will be requested from bidder recommended for award)
- i. Sample Payment Bond Format (if required, will be requested from bidder recommended for award)
- j. Sample Letter of Credit Format (if required, will be requested from bidder recommended for award)

CONFLICT OF INTEREST DISCLOSURE FORM

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

Furthermore, all Bidders must disclose the name of any City employee who owns, directly, or indirectly, an interest of more than five percent (5%) in the Bidder's firm or any of its branches.

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

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

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

_____ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other Cities, Counties, contracts, or property interest for this Bid.

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

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

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

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

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

Pursuant to Chapter 119, *Florida Statutes*, Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Delray Beach in order to perform the service. Upon request from the City of Delray Beach' custodian of public records, contract shall provide the City of Delray Beach with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes* or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract If the Contractor does not transfer the records to the City of Delray Beach. Contractor upon completion of the contract, shall transfer, at no cost, to the City of Delray Beach all public records in possession of the Contractor or keep and maintain public records required by the City of Delray Beach in order to perform the service. If the Contractor transfers all public records to the City of Delray Beach upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Delray Beach, upon request from the City of Delray Beach' custodian of public records, in a format that is compatible with the information technology systems of the City of Delray Beach.

IF 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. 1ST 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.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

DRUG-FREE WORKPLACE

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

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

NON-COLLUSION AFFIDAVIT

STATE OF _____
COUNTY OF _____

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

- a. He / She is _____ of _____, the Bidder that has submitted a Bid to perform work for the following:

ITBC No.: _____ Title: _____

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

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

- c. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Solicitation and contract for which the attached Bid has been submitted or to refrain from proposing in connection with such Solicitation and contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached Bid or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City or any person interested in the proposed contract.
- d. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

Subscribed and sworn to (or affirmed) before me this _____ day of _____ 20__, by _____, who is personally known to me or who has produced _____ as identification.

SEAL

Notary Signature _____
Notary Name: _____
Notary Public (State): _____
My Commission No: _____
Expires on: _____

SAMPLE PERFORMANCE BOND FORMAT

KNOW ALL MEN BY THESE PRESENTS: that - _____

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

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

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

As Obligee, hereinafter called the City, in the amount of _____,
(\$ _____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

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

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

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

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

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

The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the City to Contractor under the contract and any amendments thereto, less the amount properly paid by the City to the Contractor.

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

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

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

(Principal) (Seal)

(Witness) (Title)

(Seal) _____
(Name of Insurer) Surety

(Witness) By: _____
(Attorney-in-Fact)

SAMPLE PAYMENT BOND FORMAT

KNOW ALL MEN BY THESE PRESENTS: that - _____

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

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

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

As Obligee, hereinafter called the City, in the amount of _____,
(\$ _____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

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

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

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

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

b) The Principal and Surety hereby designate and appoint _____
_____ as the agent of each of them to receive and accept service of process or other pleading issued or filed in any proceeding instituted on

this bond and hereby consent that such service shall be the same as personal service on the Contractor and/or Surety.

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

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

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

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

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

(Principal) (Seal)

(Witness)

(Title)

(Seal)

(Name of Insurer) Surety

(Witness)
Fact)

By: _____
(Attorney-in-

SAMPLE LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: _____

ISSUANCE DATE: _____

APPLICANT:

{Name of Corporation} _____

{Address} _____

{City, State, Zip} _____

BENEFICIARY:

CITY OF DELRAY BEACH

100 N.W. 1ST AVENUE

DELRAY BEACH, FLORIDA 33444

FOR U.S.D. \$ _____

DATE OF EXPIRATION: _____

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

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

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

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

TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD CDB PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

{Name of Bank Branch} _____

{Address} _____

{City, State, Zip} _____

ATTN: **{Department}** _____

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

PARTIAL DRAWINGS ARE PERMITTED.

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

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

{Name of Bank} _____

BY: _____

{Name} _____

{Title} _____

SECTION 9

SAMPLE AGREEMENT FORMAT

Below is the standard agreement format for this Invitation to Bid Construction. This is a sample agreement only and is subject to revisions. **DO NOT COMPLETE.**

AGREEMENT

THIS AGREEMENT is hereby made and entered into this ____ day of _____, 20__, (the "effective date") by and between the City of Delray Beach, a Florida municipal corporation ("City"), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444, and _____, a corporation (hereafter referred to as "Contractor"), whose address is _____.

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City's Invitation to Bid Construction No. 2017-038, and the Contractor's response thereto, all of which are incorporated herein by reference.

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

ARTICLE 1. INCORPORATION OF INVITATION TO BID CONSTRUCTION

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Invitation to Bid Construction No. 2017-038, and the Contractor's response to the Invitation to Bid Construction, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City's Invitation to Bid Construction, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

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

ARTICLE 4. MISCELLANEOUS PROVISIONS

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

- i. As to the City: City of Delray Beach
100 N.W. 1st Avenue

Delray Beach, Florida 33444
Attn: City Manager
Email:

ii. with a copy to: City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney
Email:

iii. As to the Contractor: _____

Attn.: _____
Email: _____

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

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

ARTICLE 5. CONTRACT TERM

This term of this Agreement shall be from the effective date through the completion of work and full acceptance by the City, unless terminated earlier in accordance with terms set forth in the ITBC.

(Remainder of this page is intentionally left blank)

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

[SEAL]

CITY OF DELRAY BEACH, FLORIDA

By: _____
Cary D. Glickstein, City Mayor

ATTEST:

By: _____
Katerri Johnson, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
R. Max Lohman, City Attorney

CONTRACTOR _____,

By: _____

Print Name: _____

Title: _____

WITNESS:

By: _____

Print Name: _____

SECTION 10
EXHIBITS

- 10.1 EXHIBIT A, Pricing Schedule
- 10.2 EXHIBIT B, Specifications
- 10.3 EXHIBIT C, Drawings & Plans

END OF SECTION 10

**SECTION 11
SOLICITATION SUMMARY**

The City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444

PURCHASING DEPARTMENT

SOLICITATION SUMMARY

IMPORTANT NOTICE

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

BID INFORMATION

Bid Number: ITBC No. 2017-038

Title: ATLANTIC DUNES PAVILION & DECK

Due Date and Time: September 26, 2017 @ 2:00PM EST

Name of Bidder: _____

Address: _____

Contact Person: _____

Bid Amount: \$ _____

Authorized Signature: _____

Date: _____

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

THIS SOLICITATION SUMMARY MUST BE SIGNED AND INCLUDED AS AN ORIGINAL HARDCOPY IN THE SEALED PACKAGE CONTAINING YOUR BID OR SIGNED AND INCLUDED WITH YOUR SECURE ELECTRONIC BID SUBMITTAL THROUGH WWW.BIDSYNC.COM.