



The City of Delray Beach  
100 NW 1<sup>st</sup> Street  
Delray Beach, FL 33444

**PURCHASING DEPARTMENT**

## **REQUEST FOR PROPOSALS**

**RFP NO.: 2018-046**

**TITLE: BEACH EQUIPMENT RENTAL CONCESSIONS**

**DUE DATE AND TIME: August 21, 2018 2:00 P.M., (LOCAL TIME)**

### **INSTRUCTIONS**

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

Submission of Proposals electronically will be through a secure mailbox at BidSync ([www.bidsync.com](http://www.bidsync.com)) until the Due Date and Time as indicated in this solicitation. BidSync does not accept electronic Proposals after the Due Date and Time. It is the sole responsibility of the Proposer to ensure its electronic Proposal submission is complete prior to the solicitation Due Date and Time. Electronic submission of Proposals may require the uploading of forms and/or attachments as designated in this solicitation. Electronic submission must include all required forms. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited. Proposers submitting electronically shall also submit five (5) electronic versions of its Proposal on CDs or USB thumb drives in a usable PDF format to City Hall at 100 N.W. 1st Avenue, Delray Beach, FL 33444, with attention to the Purchasing Department.

All Proposals will be publicly opened at City Hall unless otherwise specified. Each hard copy Proposal submitted to the City shall have the following information clearly marked on the face of the sealed package: Proposer's name, return address, RFP number, due date for Proposals, and the title of the RFP. Included in the envelope shall be a one (1) original unbound hard copy to include a signed original solicitation Summary, four (4) duplicate hard copies, and one (1) electronic version of your Proposal on CDs or USB thumb drives in a usable PDF format. If the solicitation Summary is not included in the package as a hard copy, the City may deem the Proposal non-responsive. Proposals must contain all information required to be included in the submittal, as described in this solicitation.

## **BROADCAST**

The City of Delray Beach utilizes electronic online services for notification and distribution of its solicitation documents. The City's solicitation information can be obtained from: (a) BidSync – [www.bidsync.com](http://www.bidsync.com); (b) Purchasing webpage on the City of Delray Beach [website](#); (c) Request via email [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com); or (d) City Hall via hard copies.

Proposers who obtain solicitations from sources other than those named above are cautioned that the Request for Proposals package may be incomplete. The City will not evaluate incomplete Proposal packages. BidSync is an independent entity and is not an agent or representative of the City. Communications to independent entities 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 these websites. In the event of any discrepancy between information on these websites and the hard copy solicitation documents, the terms and conditions of the hard copy documents will prevail.

## **CONTACT**

Any questions regarding the specifications and solicitation process must be submitted in writing to the Purchasing Department at [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com). Requests for clarification and additional information must be received by the Deadline for Submission of Questions on August 9, 2018.



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

REQUEST FOR PROPOSALS NO. 2018-046  
Beach Equipment Rental Concessions

The City of Delray Beach is seeking Proposals from qualified firms for Beach Equipment Rental Concessions, in accordance with the terms, conditions, and specifications contained in this Request for Proposals.

Request for Proposals documents are available beginning July 30, 2018 on the Purchasing Department webpage of the City of Delray Beach website at [http://www.mydelraybeach.com/business/purchasing\\_department.php](http://www.mydelraybeach.com/business/purchasing_department.php) or by contacting the City Purchasing Department at [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com) or by phone at 561-243-7129.

Sealed Proposal packages must be clearly marked "RFP2018-046, "Beach Equipment Rental Concessions", and delivered to the City of Delray Beach City Hall, Front Lobby Reception Desk, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444. The deadline for submission of Proposals is August 21, 2018, at 2:00 p.m. local time. At that time, the Proposals will be publicly opened and the names of Proposers read aloud at City Hall. **Late Proposals will not be accepted and will be returned to the sender.**

The City will hold a Non-Mandatory Pre-Proposal Conference on August 8, 2018 at City Hall Conference Room, Delray Beach, starting promptly at 2:00 pm (local time).

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

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

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

CITY OF DELRAY BEACH

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**SECTION 1**  
**GENERAL INFORMATION**

- 1.1 A Pre-Proposal Conference will be held

August 8, 2018, 2:00 pm (local time)  
at  
City Hall Conference Room  
Delray Beach, FL 33444

Attendance is recommended but not mandatory for those intending to submit a Proposal.

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

- 1.2 The purpose of the Pre-Proposal Conference is to provide and solicit information relative to the scope, purpose, nature, and extent of the work, and any local conditions that may affect the work and its performance Submission of a Proposal shall constitute an acknowledgement by the Proposer that it has thoroughly examined and is familiar with the requirements of this solicitation package.

The failure or neglect of a Proposer to examine the solicitation package shall in no way relieve the Proposer of any obligation with respect to its Proposal 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.

END OF SECTION 1

**SECTION 2**  
**PROJECT OVERVIEW**

- 2.1 The City of Delray Beach, Florida, is soliciting Proposals from qualified Proposers to provide beach equipment rental concession for the City's municipal beach
- 2.2 The current contract will expire October 31, 2018, and there are no available options to renew. A new contract is needed to maintain continuity of service.
- 2.3 The City intends to award a contract for five (5) years beginning on or about November 1, 2018, and expiring on October 31, 2023. The City reserves the right to change the start date of this RFP in its sole and absolute discretion.
- 2.4 The Method of Award for this solicitation will be to the Proposer with the highest ranking or scores, whom the City is able to negotiate an acceptable Agreement.
- 2.5 The anticipated schedule for this solicitation is as follows:

| ITEM | EVENT                                         | DATE/TIME                        |
|------|-----------------------------------------------|----------------------------------|
| a.   | Issue RFP                                     | July 30, 2018                    |
| b.   | Institute Cone of Silence                     | July 30, 2018                    |
| c.   | Deadline for Delivery of Questions            | August 14, 2018 by 5:00 p.m., ET |
| d.   | Due Date and Time (for delivery of Proposals) | August 21, 2018 by 2:00 p.m., ET |
| e.   | Vendor Evaluation                             | TBD                              |

2.6 **MEETING LOCATIONS**

- **City Hall Conference Room** - located at 100 N.W. 1<sup>st</sup> Avenue, first floor, Delray Beach, FL.
- **SOC Training Room and Lobby Conference Room** - located at the Swinton Operations Complex (SOC) (old Environmental Services Department) Administration Building located at 434 South Swinton Avenue, Delray Beach, FL.

END OF SECTION 2

### SECTION 3 GENERAL TERMS AND CONDITIONS

#### 3.1 DEFINITIONS

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

#### 3.2 CONE OF SILENCE

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

#### 3.3 ADDENDUM

The Purchasing Department may issue an addendum in response to any inquiry received, prior to the due date for Proposals, which changes, adds, or clarifies the terms, provisions, or requirements of the solicitation. The Proposer should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the solicitation document or in the addenda issued.

Where there appears to be a conflict between the solicitation and any addenda, the last addendum issued shall prevail. It is the Proposer's responsibility to ensure receipt of all addenda and any accompanying documentation. The Proposer is required to submit with its Proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

#### 3.4 LEGAL REQUIREMENTS

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

#### 3.5 CHANGE OF PROPOSAL

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

#### 3.6 WITHDRAWAL OF PROPOSAL

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

#### 3.7 CONFLICTS WITHIN THE SOLICITATION

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

#### 3.8 PROMPT PAYMENT TERMS

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

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

3.9 DISCOUNTS (PROMPT PAYMENTS)

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

3.10 PREPARATION OF PROPOSALS

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

3.11 CANCELLATION OF SOLICITATION

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

3.12 AWARD OF CONTRACT

- i. This contract may be awarded to the responsive and responsible Proposer meeting all requirements as set forth in the solicitation. The City reserves the right to reject any and all Proposals, to waive irregularities or technicalities, and to re-advertise for all or any part of this solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.
- ii. The City reserves the right to reject any and all Proposals if it is determined that prices are excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.
- iii. The Proposer's prior performance as a prime contractor or subcontractor on previous City contracts shall be taken into account in evaluating the Proposal received for this solicitation.
- iv. The City will provide a copy of the ranking and scores to all Proposers responding to this solicitation.
- v. Award of this Proposal may be predicated on compliance with and submittal of all required documents as stipulated in the solicitation.
- vi. The City reserves the right to request and evaluate additional information from any Proposer after the due date for Proposals, as the City deems necessary.

3.13 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 successful.

3.14 WARRANTY

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

3.15 ESTIMATED QUANTITIES

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

3.16 NON-EXCLUSIVITY

It is the intent of the City to enter into an agreement with the selected Proposer that will satisfy its needs as described herein. However, the City reserves the right as deemed in its

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

3.17 CONTINUATION OF WORK

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

3.18 PROTEST

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

b. The written protest must be received no later than seventy-two (72) consecutive hours (excluding Saturdays, Sundays, and legal holidays) after the time of initial posting of the intended award. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Proposer of all rights of protest under this procedure.

c. 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.

3.19 LAWS AND REGULATIONS

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

3.20 LICENSES, PERMITS AND FEES

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

3.21 SUBCONTRACTING

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

3.22 ASSIGNMENT

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

3.23 SHIPPING TERMS

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

3.24 RESPONSIBILITIES AS EMPLOYER

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

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

3.25 INDEMNIFICATION

The selected Proposer shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the selected Proposer or its employees, agents, servants, partners, principals, or subcontractors. The selected Proposer shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The selected Proposer expressly understands and agrees that any insurance protection

required by this contract agreement or otherwise provided by the selected Proposer shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

3.26 COLLUSION

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

3.27 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.

3.28 TERMINATION FOR CONVENIENCE

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

3.29 TERMINATION FOR DEFAULT

The City reserves the right to terminate this contract, in part or in whole, or place the vendor on probation in the event the selected Proposer fails to perform in accordance with the terms and conditions stated herein by providing written notice of such failure or default and by specifying a reasonable time period within which the selected Proposer must cure any such failure to perform or default. If the

selected Proposer fails to cure the default within the time specified, the City may then terminate the subject contract by providing written notice to the selected Proposer. The City further reserves the right to suspend or debar the selected Proposer in accordance with the appropriate City ordinances, resolutions, and/or policies. The vendor will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the incumbent Proposer

3.30 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.

3.31 ACCESS AND AUDIT OF RECORDS

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

3.32 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.

3.33 PRE-AWARD INSPECTION

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

3.34 PROPRIETARY/CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of, Proposal submittals will be available for public inspection after the opening of Proposals in compliance with Chapter 119 of the Florida Statutes; popularly known as the "Public Record Law." The Proposer

shall not submit any information in response to this solicitation that Proposer considers a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection that would otherwise be available to the Proposer. In the event that the Proposer submits information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Proposal as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the Proposal. The redaction or return of information pursuant to this clause may render a Proposal non-responsive.

**3.35 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

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

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

PHI shall maintain its protected status regardless of the form and method of transmission (paper records and/or electronic transfer of data). The selected Proposer must give

its customers written notice of its privacy information practices, including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**3.36 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.

**3.37 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).

**3.38 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.

**3.39 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.

**3.40 SEVERABILITY**

If any part of this contract is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

**3.41 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.

**3.42 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.

**3.43 EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION**

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

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

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

**3.44 AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS**

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

**3.45 CRIMINAL HISTORY BACKGROUND CHECKS**

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

**3.46 LABOR, MATERIALS, AND EQUIPMENT**

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

**3.47 MINIMUM WAGE REQUIREMENTS**

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

**3.48 PACKING SLIP AND DELIVERY TICKET**

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

**3.49 PURCHASE OF OTHER ITEMS**

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

**3.50 PUBLIC RECORDS**

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

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

**3.51 CONFLICTS OF INTEREST**

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

3.52 PUBLIC ENTITY CRIMES

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

3.53 OTHER GOVERNMENTAL AGENCIES

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

3.54 COMPLETION OF WORK AND DELIVERY

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

3.55 FAILURE TO DELIVER OR COMPLETE WORK

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

3.56 CORRECTING DEFECTS

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

3.57 ACCIDENT PREVENTION AND BARRICADES

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

3.58 OMISSIONS IN SPECIFICATIONS

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

3.59 MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

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

3.60 TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS

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

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

3.61 TAXES

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

3.62 PROPOSER'S COSTS

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

3.63 SUBSTITUTION OF PERSONNEL

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

3.64 FORCE MAJEURE

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

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

- d. The non-performing party uses its best efforts to remedy its inability to perform.

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

3.65 NOTICES

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

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

3.66 FISCAL FUNDING OUT

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

END OF SECTION 3

## **SECTION 4**

### **SPECIAL TERMS AND CONDITIONS**

#### **4.1 PURPOSE**

The purpose of this Request for Proposals (RFP) is to solicit Proposals from qualified firms who can provide beach equipment rental concession for the City's municipal beach, in accordance with the terms, conditions, and specifications contained in this RFP, it is the intent of the City to award a single Contract to the first ranked Contractor responding to this RFP

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

#### **4.2 ELIGIBILITY**

To be eligible to respond to this Request for Proposals and be considered for award, the Proposer must demonstrate to the satisfaction of the City that it or the principals assigned to the project has successfully provided services, similar in scope and complexity, for the provision of high quality Beach Amenity Rental Services.

#### **4.3 LIMITATIONS**

Intentionally Omitted

#### **4.4 RECORDS, ACCOUNTS, AND STATEMENTS**

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

#### **4.5 GENERAL STANDARDS**

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

#### **4.6 DEFAULT**

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

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

#### 4.7 INSURANCE

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

The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ 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 selected Proposer's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

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

The selected Proposer shall provide insurance coverage as follows:

- a. **WORKERS COMPENSATION AND EMPLOYER'S LIABILITY**  
Workers Compensation Insurance to apply for all employees in compliance with the "Workers Compensation Law" of the State of Florida and all applicable Federal laws. The City reserves the right not to accept exemptions to the Workers Compensation requirements of this solicitation.  
Employer's Liability Insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- b. **COMPREHENSIVE GENERAL LIABILITY**

Comprehensive General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00); and include Products/Completion Liability of One Million Dollars (\$1,000,000). Such certificate shall list the City as additional insured.

NOTE: If Comprehensive General Liability limits are less than One Million Dollars (\$1,000,000.00), the sum of Comprehensive General Liability limits and Excess Liability limits must equal no less than One Million Dollars (\$1,000,000.00).

c. AUTOMOBILE LIABILITY

Automobile Liability Insurance to include owned, non-owned, and hired, with minimum limits of One Million Dollars (\$1,000,000.00) each occurrence.

d. ~~PROFESSIONAL LIABILITY~~

~~Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.~~

e. PRODUCTS/COMPLETED PRODUCTS OPERATIONS

Products/completed products operations with limits of not less than Two Million Dollars (\$2,000,000) annual aggregate.

f. COMMERCIAL CRIME

Commercial Crime Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate

The selected Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of A- VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1<sup>st</sup> Ave., Delray Beach, FL 33444.

4.8 PERFORMANCE BOND/LETTER OF CREDIT

The selected Proposer shall execute and deliver to the City, within five (5) days after the City issues a Purchase Order under this Contract, a Performance Bond or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of the Purchase Order, as surety for faithful performance under the terms and conditions of the Contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond or Unconditional Irrevocable Letter of Credit.

4.9 CERTIFICATIONS

Any Proposer which submits an offer in response to this solicitation shall, at the time of such offer, hold all the required licenses, permits, and certifications issued by the applicable State

or County agency qualifying the Contractor to perform the e services described in this solicitation. The City may at its option, and in its best interest, allow the Proposer to supply any missing information on certification and licensing during the Bid Evaluation period.

4.10 METHOD OF PAYMENT: MONTHLY INVOICES

Intentionally Omitted

4.11 SUBCONTRACTING IS NOT ALLOWED

Intentionally Omitted

4.12 OTHER FORMS OR DOCUMENTS

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

4.13 MODIFICATION OF SERVICES

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

4.14 PERFORMANCE REVIEWS AND RATINGS

The City Contract Coordinator may develop a Contract performance evaluation report. This report shall be used to periodically review ad rate the Contractor's performance under the contract with performance rating as follows:

|                |                                                                                                                                                                                                                                            |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Excellent      | Fair exceeds requirements                                                                                                                                                                                                                  |
| Good           | Exceeds requirements                                                                                                                                                                                                                       |
| Fair           | Just meets requirements                                                                                                                                                                                                                    |
| Poor           | Does not meet requirements and contractor is subject to penalty provisions under the contract                                                                                                                                              |
| Non-compliance | Either continued poor performance after notice or a performance level that does not meet a significant portion of the requirements. This makes the Contractor subject to the default or cancellation for cause provisions of the contract. |

4.15 MINIMUM FEES

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

Minimum acceptable guaranteed annual fee payable to the City:

|        |              |
|--------|--------------|
| Year 1 | \$440,625.00 |
| Year 2 | \$484,688.00 |
| Year 3 | \$533,155.00 |
| Year 4 | \$586,470.00 |
| Year 5 | \$645,117.00 |

The above is the minimum acceptable guaranteed annual fees for years one (1) through five (5). Minimum acceptable fee is based on total number of days of sunshine in Delray Beach (average 235 days/yr) times 70% rental time \$7.50 per set-up. Proposer may propose higher minimum guaranteed annual fees as part of the response to the proposal section of the RFP.

For any request for additional set-ups, the request must be submitted in writing via email [fisher@mydelraybeach.com](mailto:fisher@mydelraybeach.com) with the following payment:

- a. 1-49 = \$750 fee paid to City of Delray Beach with written request. If request is denied, fee is returned.
- b. 50-99 = \$1500 fee paid to City of Delray Beach with written request. If request is denied, fee is returned.
- c. 100 – 149 = \$2500 fee paid to the City of Delray Beach with written request. If request is denied, fee is returned.

END OF SECTION 4

## **SECTION 5**

### **SCOPE OF SERVICES**

#### **5.1 GENERAL INFORMATION AND BACKGROUND**

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

#### **5.2 BASIC SERVICES**

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

- i. Beach equipment rental concession
- ii. Equipment Set-up and Location
- iii. Maintenance of Equipment and Concession Area

#### **5.3 ADDITIONAL INFORMATION**

Intentionally Omitted

#### **5.4 BEACH EQUIPMENT**

- i. At no time will more than three hundred fifty (350) set-ups (as defined above and below) be permitted on the beach. The three hundred fifty (350) total includes equipment for Atlantic Dunes Park. Only 350 set-ups be allowed. This includes no more than 300 on the main beach and 50 at Atlantic Dunes location. Requests for additional set-ups must be submitted in writing a minimum of two (2) weeks prior to the date of the request. This request for additional set-ups MUST include a map with detailed locations noted where the additional set-ups may be located, if approved.. Requests for additional set-ups must be accompanied by the additional fee as noted in the fee section. If the request is denied, the fee will be returned.
- ii. The maximum allowable amount of equipment may be lowered by the City of Delray Beach as needed due to beach erosion, diminished beach size, special events, or other circumstances. The City shall have the right to increase or decrease the number of locations at the discretion of the City.
- iii. All beach chairs, cabanas, umbrellas, cushions, etc. will be uniform in appearance and colors and style must be approved by the City of Delray Beach. All equipment must be of very high quality in both form, function and appearance. Equipment must be in new or like-new condition at all times, and no vinyl is permitted. Any proposed modifications to the amenities provided herein shall be subject to the prior written approval by the City. (This includes any personalization, logos, or other special wording/markings or signage). Setups shall be defined as:
  - a. One (1) umbrella or one (1) cabana; or
  - b. One (1) umbrella with one (1) or two (2) chairs or recliners with cushions

- iv. The contractor shall not be authorized to rent any equipment which is not scheduled in his proposal furnished to the City, unless prior to such rental, the contractor shall have furnished an additional list of equipment to the City and received approval. Equipment list requests will be submitted to the City in writing.
- v. The City reserves the right to perform random inspections of the equipment to determine quality, safety, and compliance with contract. Violations of the contract will result in monetary penalties as follows:
  - a. Warning: The contractor will receive a warning of a potential violation (first time only) and be allowed 48 hours to rectify the violation.
  - b. First violation: \$5,000
  - c. Second violation: \$10,000
  - d. Third violation: \$20,000
  - e. Fourth violation: Contract termination

#### 5.5 EQUIPMENT SET-UP AND LOCATION

- i. Upon execution of this contract, the contractor acknowledges that all of the beaches are public and concession operations must not restrict, or appear to restrict, access to the general public, or in any way limit the public nature or ambiance of the beachfront. The contractor will conduct its operations so as to maintain a reasonably quiet and tranquil environment and make no public disturbances. The contractor will not in any way limit or restrict the public from using any portion of the public beach. All of Delray Municipal Beach will remain available for public use whether or not the public elects to patronize or rent contractor equipment.
- ii. Upon execution of this contract, the contractor will submit a written plan indicating the location of all equipment. Equipment includes any item placed on the beach by the contractor. This plan will be submitted to the City which shall have the right to approve or disapprove the location of equipment. The contractor may not alter the set-up location of equipment without prior consent from an authorized City designee.

The contractor agrees that it may be necessary for the City to alter set-up plans in the interest of public safety and to ensure a clear line of sight for patron surveillance. The contractor and all employees of the contractor will respond promptly and effectively carry out any such directions.
- iii. Equipment set up and location plans must conform to the following conditions:
  - a. Equipment and service is restricted by the boundaries of the municipal beaches and recreation areas. No equipment will be set up or stored off site of the public beach. Equipment will not be set up within the designated recreation areas. Equipment Setups may be pre-arranged by the Contractor each day no more than 30 minutes in advance of normal business hours.
  - b. Equipment must be arranged in one or two rows ONLY. No more than two rows of any equipment may be placed on any section of beach without written authorization from the City of Delray Beach. For the purpose of this contract, a row is defined as two or more set-ups of equipment arranged next to each other or within proximity to one another. Equipment is defined as any item which the contractor places on the beach.
  - c. No equipment will be placed where it obstructs or enters the line of sight when viewing the Atlantic Ocean from the Ocean Rescue lifeguard towers.
- iv. No equipment will be placed in front of beach access pathways; The City shall have the right to approve or disapprove all locations, and limit the number of advanced equipment setups

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

#### 5.6 BEACH WHEEL CHAIRS

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

#### 5.7 MAINTENANCE OF EQUIPMENT AND CONCESSION AREA

- i. The contractor will keep all equipment in good repair so that it is aesthetic in appearance and in safe usable condition so as not to present any potential hazard to any beach patron. Equipment will be maintained in a manner that will ensure continuous, satisfying service to the public. Damaged equipment will be repaired or promptly removed from the beach until it is restored to usable condition. Damaged equipment must be repaired or removed from the beach by the following day it was discovered or reported damaged. The contractor will be responsible for any costs incurred with the disposal or removal of equipment.
- ii. When the contractor seeks to utilize a motorized vehicle for the purpose of transporting equipment to or from the beach they must obtain prior approval from a designated

employee of the City. The contractor will ensure that only employees with a valid license operate such vehicles and that operators conform to the following regulations:

- a. Vehicle use will be restricted to weekday mornings when beach visitation is lowest. The city may amend this requirement in the event of an emergency such as a hurricane which necessitates prompt relocation of equipment.
  - b. Vehicle operators will limit distractions and direct attention to operating the vehicle in a manner that maximizes the safety of beach patrons. Cell phones will not be used while vehicles are being operated.
- iii. The contractor will remove all debris and litter within fifty (50) feet of all concession areas or within fifty (50) feet of any area where equipment is placed. Debris and litter removal will be conducted throughout the day of operation. The contractor will complete debris and litter removal by disposing of any items within fifty (50) feet of equipment. The debris and litter removed by the contractor will include but not be limited to cigarette butts, bottle caps, and any glass, plastic, paper and metal objects.
  - iv. The contractor will maintain the main beach walkway located in the immediate vicinity of the Atlantic Avenue pavilion. The contractor will maintain this walkway on a daily basis by sweeping and keeping it free of sand and debris.

#### 5.8 HOURS OF OPERATION

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

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

#### 5.9 RATES CHARGED FOR BEACH EQUIPMENT

- a. Resale and Rental Rates and Fees –

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

- b. Payment Methods

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

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

All rental rates for beach umbrellas, chairs, cabanas and similar beach equipment shall be approved by the City Manager. Any increase in rental rates must have prior approval of the City Manager or his designee. All rentals of equipment shall include at a minimum a one-half day- (1/2) and full-day rental rate.

The Contractor shall furnish to the City a schedule of rental charges on all equipment. The contractor shall provide monthly reports of the income generated from the sales and the City may negotiate additional percentages.

5.10 ADVERTISING AND SIGNS

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

5.11 PARKING REQUIREMENTS

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

5.12 CONTRACTOR STAFF

- i. During all hours of operation, the contractor shall maintain adequate on-duty personnel to comply with all terms and conditions of this contract. A minimum of one (1) staff member employed by the contractor will be stationed at each of the ~~three~~ concession areas ~~as described in Section D of this contract~~. A staff member will be stationed at each concession area during hours of operation.

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

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

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

5.13 LICENSES

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

5.14 SELECTED PROPOSER'S RESPONSIBILITY

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

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

5.15 SUPERVISION

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

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

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

5.16 EMPLOYEES

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

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

5.17 COMPLAINTS

The City provides an email address that will be checked at least once per day as a means to respond to patron complaints or requests or for correspondence with the City of Delray Beach. All complaints received by the Contractor shall be directed to be sent to the City's email address [parks&recreation@mydelraybeach.com](mailto:parks&recreation@mydelraybeach.com). Any complaints received in writing shall be forwarded to the City Representative within 24 hours of receipt.

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

5.18 PROTECTION OF PROPERTY

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

5.19 HURRICANE EVACUATION PLAN

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

5.20 SPECIAL EVENTS

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

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

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

5.21 ADDITIONAL AMENITIES

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

A proposed Additional Amenities plan must be provided in Tab 7 of the proposal section of this RFP. Placement of Additional Amenities must be included as part of the proposed site plan.

The City will negotiate a percentage of the Contractor's annual gross revenue net sales tax collected, derived from the Contractor's rental and/or sale of any and all items offered to customers in the operation of Additional Amenities in accordance with the terms of this contract.

5.22 KEY CONTROL DELETE  
Intentionally Omitted

5.23 SECURITY AND IDENTIFICATION

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

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

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

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

5.24 REPAIRS

The selected Proposer shall promptly notify the City of any needed repairs and/or damage to fixtures, building, and appurtenances observed during the performance of the services. Any

item of a critical, priority, or emergency nature shall be verbally reported immediately to the City upon discovery, with written notification to follow prior to the end of the work shift.

END OF SECTION 5

## **SECTION 6 RESPONSE REQUIREMENTS**

### **6.1 SUBMITTAL REQUIREMENTS**

In response to this solicitation, the Proposer should return one (1) signed original solicitation Summary and an accessible electronic copy of your Proposal on CD or USB thumb drive, of the entire completed Proposal Submittal Package. Proposers should carefully follow the format and instructions outlined herein. All documents and information must be fully completed and signed as required. Do not password-protect electronic documents.

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

### **6.2 REQUIRED INFORMATION**

In addition to the information required in Section 5, Scope of Services, Proposers must submit the following information with their Proposals:

#### **A. SUBMITTAL FORMAT**

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

#### **B. PROPOSALS SHOULD FOLLOW THE FORMAT BELOW:**

#### **TAB 1 – INTRODUCTION**

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

#### **TAB 2 – TABLE OF CONTENTS**

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

#### **TAB 3 – MINIMUM QUALIFICATIONS**

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

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

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

- B. Proposer has provided beach equipment rental services for a minimum of three (3) of clients since 2011. Provide the following information for the three (3) qualifying clients.
- i. Name of client
  - ii. Location (City/State)
  - iii. Client contact name
  - iv. Contact phone
  - v. Contact email
  - vi. Project dates (Start/End)
  - vii. Performance period
  - viii. Total amount of contract/and all revenue paid

- C. Proposer Is NOT listed on the Florida State Board of Administration, Scrutinized List of Prohibited Companies found at <http://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/PFIA/tabid/1478/ItemId/3354/Default.aspx>

**Provide an executed copy of the Scrutinized Company Certification form included in this solicitation.**

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

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

#### TAB 4 – FIRM INFORMATION

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

Phone  
E-mail  
Mailing Address  
City, State, Zip

- F. Provide details of any ownership changes to Proposer's organization in the past three years or changes anticipated within six months of the Due Date and Time (e.g., mergers, acquisitions, changes in executive leadership).
- G. Provide the names of the persons who are officers or principals of the company.

#### TAB 5 - EXPERIENCE AND BACKGROUND

- A. Years in business.  
Re
- B. Provide a brief description of Proposer's team, the organization, its structure and philosophy.
- C. Provide Proposer's years of experience in beach equipment rental concession services.
- D. Describe Proposer's experience in beach equipment rental concession services for other government agencies that included the following:
  - i. Equipment Set-up and Location plan
  - ii. Hurricane evacuation plan
  - iii. Management and staffing plan
  - iv. Maintenance of Equipment Concession Area plan
  - v. Method proposed to anchor umbrellas, and windbreaker/clamshells
- E. Identify and include information regarding experience and qualifications of Proposer's staff to be assigned to the Project. Include their names, certifications and/or licenses, and services the individuals will provide to the City.
- F. Describe any significant or unique awards received or accomplishments in previous similar projects.
- G. Provide information on any lawsuits pending or any judgments, in the last five (5) years, which are concerned directly with the firm, the staff, or any part of the Proposer's organization, which are proposed to perform on this contract. The contractor's background, complaints, and performance will be considered as a part of the evaluation process.

#### TAB 6 - APPROACH AND CAPACITY

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

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

#### TAB 7 – ADDITIONAL AMENITIES

In this Section, include information regarding proposed Additional Amenities and rental and sales potential of such activities. See Section 5.21

#### TAB 8 – PROPOSED REVENUES

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

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

#### TAB 9 – ATTACHMENTS

All Attachment/Forms and Affidavits required by this solicitation shall be fully executed by the Proposer and submitted as shown in Section 9 of this solicitation.

END OF SECTION 6

## **SECTION 7 THE EVALUATION PROCESS**

### **7.1 REVIEW OF PROPOSALS FOR RESPONSIVENESS**

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

### **7.2 REVIEW OF PROPOSALS FOR RESPONSIBILITY**

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

### **7.3 EVALUATION CRITERIA**

Proposals will be evaluated by an Evaluation/Selection Committee that will evaluate and rank Proposals on the criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate City personnel and/or members of the community, as deemed necessary, with the appropriate experience and/or knowledge.

| <u>CRITERIA</u>                               | <u>MAX. POINTS</u> |
|-----------------------------------------------|--------------------|
| a. Experience, Background, and Service Record | 40                 |
| b. Approach and Capacity                      | 25                 |
| c. Performance and Services                   | 15                 |
| d. Revenue Fee                                | 20                 |

### **7.4 ORAL PRESENTATIONS**

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

7.5 PRICE OFFERS AND EVALUATION reword

After the evaluation of the Proposal, the City will evaluate the revenue aspects of the Proposal. The pricing will be evaluated subjectively in combination with the technical areas of the Proposal, including an evaluation of how well it matches the Proposer's understanding of the City's needs described in this solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest-ranked Proposer. The City reserves the right to negotiate the final terms, conditions, and pricing of the contract as may be in the best interest of the City.

7.6 CONTRACT AWARD

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

END OF SECTION 7

## SECTION 8 PRICING INFORMATION

### 8.1 REVENUE PROPOSAL

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

The option for renewal shall be exercised upon mutual agreement between Contractor and City, by written agreement with all original terms and conditions adhered to with no deviations.

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

| Contractor's Proposed Annual Fee  |                                   |    |
|-----------------------------------|-----------------------------------|----|
| Year One Annual Concession Fee:   | (minimum acceptable \$440,625.00) | \$ |
| Year Two Annual Concession Fee:   | (minimum acceptable \$484,688.00) | \$ |
| Year Three Annual Concession Fee: | (minimum acceptable \$533,155.00) | \$ |
| Year Four Annual Concession Fee:  | (minimum acceptable \$586,470.00) | \$ |
| Year Five Annual Concession Fee:  | (minimum acceptable \$645,117.00) | \$ |
| Total Five Year Concession Fee:   |                                   | \$ |

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

END OF SECTION 8

## **SECTION 9 PROPOSAL SUBMITTALS**

### **9.1 FORMS**

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

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

**ACKNOWLEDGEMENT OF ADDENDA**

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

**PART I:**

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

Addendum #1, Dated \_\_\_\_\_

Addendum #2, Dated \_\_\_\_\_

Addendum #3, Dated \_\_\_\_\_

Addendum #4, Dated \_\_\_\_\_

Addendum #5, Dated \_\_\_\_\_

Addendum #6, Dated \_\_\_\_\_

Addendum #7, Dated \_\_\_\_\_

Addendum #8, Dated \_\_\_\_\_

Addendum #9, Dated \_\_\_\_\_

Addendum #10, Dated \_\_\_\_\_

**PART II:**

☐

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS SOLICITATION

Firm Name

Signature

Name and Title (Print or Type)

Date

### PROPOSAL SUBMITTAL SIGNATURE PAGE

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

Firm Name:

---

Street Address:

---

Mailing Address (if different from Street Address):

---

Telephone Number(s): \_\_\_\_\_

Fax Number(s): \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

Prompt Payment Terms: \_\_\_\_\_% \_\_\_\_\_ days' net \_\_\_\_\_ days

Signature: \_\_\_\_\_  
(Signature of authorized agent)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

**THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL, FOR NOT LESS THAN 90 DAYS, AND THE PROPOSER'S UNEQUIVOCAL OFFER TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS SOLICITATION. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE, BY AN AUTHORIZED REPRESENTATIVE, SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL.**

**CONFLICT OF INTEREST DISCLOSURE FORM**

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

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

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

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

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

- \_\_\_\_\_ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other Cities, Counties, contracts, or property interest for this Proposal.
- \_\_\_\_\_ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this Proposal.

Acknowledged by:

|                                |
|--------------------------------|
| _____                          |
| Firm Name                      |
| _____                          |
| Signature                      |
| _____                          |
| Name and Title (Print or Type) |
| _____                          |
| Date                           |

**NOTIFICATION OF PUBLIC ENTITY CRIMES LAW**

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

Acknowledged by:

|                                |
|--------------------------------|
| Firm Name                      |
| Signature                      |
| Name and Title (Print or Type) |
| Date                           |

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

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

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

Acknowledged:

---

Firm Name

---

Signature

---

Name and Title (Print or Type)

---

Date

**DRUG-FREE WORKPLACE**

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

Acknowledged by:

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (Print or Type)

\_\_\_\_\_  
Date

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

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

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

RFP No.: \_\_\_\_\_ Title: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_  
Signature

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: \_\_\_\_\_

**TRUTH – IN – NEGOTIATION CERTIFICATE**

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

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

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

### 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\_\_.

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

**SAMPLE PAYMENT BOND FORMAT**

KNOW ALL MEN BY THESE PRESENTS: that - \_\_\_\_\_  
\_\_\_\_\_

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

as Principal, hereinafter called Contractor, and \_\_\_\_\_,  
(Name of Insurer)  
as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach  
County, Florida.

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

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

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

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

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

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

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

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

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Principal) (Seal)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Insurer) Surety (Seal)

\_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
(Attorney-in-Fact)

### SAMPLE LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: \_\_\_\_\_  
ISSUANCE DATE: \_\_\_\_\_

APPLICANT:

**{Name of Corporation}** \_\_\_\_\_  
**{Address}** \_\_\_\_\_  
**{City, State, Zip}** \_\_\_\_\_

BENEFICIARY:

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

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

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

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

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

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

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

**{Name of Bank Branch}** \_\_\_\_\_

**{Address}** \_\_\_\_\_

**{City, State, Zip}** \_\_\_\_\_

ATTN: **{Department}** \_\_\_\_\_

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

PARTIAL DRAWINGS ARE PERMITTED.

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

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

**{Name of Bank}** \_\_\_\_\_

BY: \_\_\_\_\_

**{Name}** \_\_\_\_\_

**{Title}** \_\_\_\_\_

**SECTION 10**  
**SAMPLE AGREEMENT FORMAT**

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

**AGREEMENT**

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

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City's Request for Proposals No. 2018-046, and the Contractor's response thereto, all of which are incorporated herein by reference.

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

**ARTICLE 1. INCORPORATION OF REQUEST FOR PROPOSALS**

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Request for Proposals No. 2018-046 and the Contractor's response thereto, including all documentation required thereunder.

**ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES**

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City's Request for Proposals, 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.

**ARTICLE 4. MISCELLANEOUS PROVISIONS**

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

- i. As to the City: City of Delray Beach  
100 NW 1<sup>st</sup> Street  
Delray Beach, Florida 33444  
Attn: City Manager  
Email: Dejesus@mydelraybeach.com

ii. with a copy to: City of Delray Beach  
200 NW 1<sup>st</sup> Street  
Delray Beach, Florida 33444  
Attn: City Attorney  
Email: LohmanM@mydelraybeach.com

iii. As to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Email: \_\_\_\_\_

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

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

ARTICLE 5. CONTRACT TERM

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

(The remainder of this page is intentionally left blank)

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

CITY OF DELRAY BEACH, FLORIDA

[SEAL]

By: \_\_\_\_\_  
Cary D. Glickstein, City Mayor

ATTEST:

By: \_\_\_\_\_  
Kimberly Wynn, Interim City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
R. Max Lohman, City Attorney

CONTRACTOR

[SEAL]

By: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018,  
by \_\_\_\_\_, as \_\_\_\_\_ (name of officer or agent, title of officer  
or agent), of \_\_\_\_\_ (name of corporation acknowledging), a  
\_\_\_\_\_ (state or place of incorporation) corporation, on behalf of the corporation.  
He/She is personally known to me or has produced \_\_\_\_\_ (type  
of identification) as identification

\_\_\_\_\_  
Notary Public – State of <state>

**SECTION 11**  
**EXHIBITS**

Exhibit A - Scrutinized Company Certification form

**SECTION 12**  
**SOLICITATION SUMMARY**

The City of Delray Beach  
100 NW 1<sup>st</sup> Street  
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 Proposal. If subsequent to the opening of Proposals, the City determines that the information contained in the electronic version of your Proposal is different from the information on this solicitation Summary, the City reserves the right to deem your Proposal NON-RESPONSIVE, and remove your Proposal from further evaluation and consideration for contract award.

**PROPOSAL INFORMATION**

Proposal Number: RFP2018-046

Title: Beach Equipment Rental Concessions

Due Date and Time: August 21, 2018, 2:00 P.M., ET

Name of Proposer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

**THIS SOLICITATION SUMMARY MUST BE SIGNED AND INCLUDED AS AN ORIGINAL HARDCOPY IN THE ENVELOPE CONTAINING YOUR PROPOSAL.**



CITY OF DELRAY BEACH  
100 N.W. 1<sup>ST</sup> AVENUE, DELRAY BEACH, FL 33444

## Solicitation Addendum

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**Addendum No.:** 1  
**Solicitation No.:** 2018-046  
**Project No.:** N/A  
**Solicitation Title:** Beach Equipment Rental Concessions  
**Addendum Date:** August 9, 2018  
**Purchasing Contact:** Ja'Anal McAden [mcadenj@mydelraybeach.com](mailto:mcadenj@mydelraybeach.com)

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RFP 2018-046 IS HEREBY AMENDED AS SET FORTH HEREIN BELOW. CITY RESPONSES TO QUESTIONS POSED BY PROSPECTIVE PROPOSERS ARE ALSO PROVIDED BELOW. THIS ADDENDUM NO. 1 IS HEREBY INCORPORATED IN AND MADE A PART OF RFP 2018-046.

### QUESTIONS AND RESPONSES:

**Q1. Does the City want the full amount for the five year period of the contract, the first year of the contract or monthly payments for the letter of credit for the purchase order? What is the letter of credit the City is holding now for the current contract?**

**R1.** Performance Bond/Letter of Credit was not a requirement of the current contract. See page 17 Section 4.8 Performance Bond/Letter of Credit

### MODIFICATIONS:

#### 4.8 PERFORMANCE BOND/LETTER OF CREDIT

The selected Proposer shall execute and deliver to the City, within five (5) days after the City issues a Purchase Order under this Contract, a Performance Bond or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of the Purchase Order, as surety for faithful performance under the terms and conditions of the Contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond or Unconditional Irrevocable Letter of Credit.

Comprehensive General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00); and include Products/Completion Liability of One Million Dollars (\$1,000,000). Such certificate shall list the City as additional insured.

NOTE: If Comprehensive General Liability limits are less than One Million Dollars (\$1,000,000.00), the sum of Comprehensive General Liability limits and Excess Liability limits must equal no less than One Million Dollars (\$1,000,000.00).

- c. **AUTOMOBILE LIABILITY**  
Automobile Liability Insurance to include owned, non-owned, and hired, with minimum limits of One Million Dollars (\$1,000,000.00) each occurrence.
- d. **PROFESSIONAL LIABILITY**  
Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.
- e. **PRODUCTS/COMPLETED PRODUCTS OPERATIONS**  
Products/completed products operations with limits of not less than Two Million Dollars (\$2,000,000) annual aggregate.
- f. **COMMERCIAL CRIME**  
Commercial Crime Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate

The selected Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of A- VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1<sup>st</sup> Ave., Delray Beach, FL 33444.

#### 4.8 PERFORMANCE BOND/LETTER OF CREDIT

The selected Proposer shall execute and deliver to the City, within five (5) days after the City issues a Purchase Order under this Contract, a Performance Bond or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of the Purchase Order, as surety for faithful performance under the terms and conditions of the Contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond or Unconditional Irrevocable Letter of Credit.

#### 4.9 CERTIFICATIONS

Any Proposer which submits an offer in response to this solicitation shall, at the time of such offer, hold all the required licenses, permits, and certifications issued by the applicable State

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NOTE: Items that are ~~struck through~~ are deleted. Items that are underlined have been added. All other terms and conditions remain as stated in the RFP.

### **End of Addendum**

#### **INSTRUCTIONS:**

Receipt of this addendum must be acknowledged as instructed in the solicitation document. Failure to acknowledge receipt of this Addendum may result in the disqualification of Respondent's response.



CITY OF DELRAY BEACH  
100 N.W. 1<sup>st</sup> AVENUE, DELRAY BEACH, FL 33444

## Solicitation Addendum

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**Addendum No.:** 2  
**Solicitation No.:** 2018-046  
**Project No.:** N/A  
**Solicitation Title:** Beach Equipment Rental Concessions  
**Addendum Date:** August 13, 2018  
**Purchasing Contact:** Ja'Anal McAden [mcadenj@mydelraybeach.com](mailto:mcadenj@mydelraybeach.com)

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**RFP 2018-046 IS HEREBY AMENDED AS SET FORTH HEREIN BELOW. CITY RESPONSES TO QUESTIONS POSED BY PROSPECTIVE PROPOSERS ARE ALSO PROVIDED BELOW. THIS ADDENDUM NO. 2 IS HEREBY INCORPORATED IN AND MADE A PART OF RFP 2018-046.**

### QUESTIONS AND RESPONSES:

**Q1. Section 5.5.v states at minimum, equipment plans may include 3 areas, there are only 2 listed.**

R1. Equipment plans must be submitted with each submission and “may include 3 areas.” The areas note in section 5.5 – from northern recreation area to southern reaction is the only area where cabanas may be located – the 3 separate areas on the plan submitted should be within this area noted in 5.5.v.a.

**Q2. The RFP states there is a maximum number of setups, with the option for requesting additional set ups When the request is granted for additional set ups, how long does the term last for?**

R2. The requested increase is on a day-to-day request.

**Q3. Was there an oversight requesting Professional Insurance? The RFP does not require professional services where this coverage generally applies such as architects or accountants. We offer beach rental services only.**

R3. Professional Liability insurance is not required for this solicitation. See pages 16-17 modification.

**Q4. Was there an oversight requesting Crime Insurance? This is generally needed if a business handles financial securities such as stocks and bonds or financial wiring services. We offer beach rental services only.**

R4. Commercial Crime insurance is a requirement of this solicitation.

**Q5. Is there a Section D as referenced in this RFP? (Item 5.12.i)**

R5.

**5.12 CONTRACTOR STAFF**

i. During all hours of operation, the contractor shall maintain adequate on-duty personnel to comply with all terms and conditions of this contract. A minimum of one (1) staff member employed by the contractor will be stationed at each of the ~~three~~ concession areas ~~as described in Section D of this contract.~~ A staff member will be stationed at each concession area during hours of operation.

**MODIFICATIONS:**

See pages 16-17

**4.7 INSURANCE**

~~d. PROFESSIONAL LIABILITY~~

~~Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.~~

See page 24

**5.12 CONTRACTOR STAFF**

i. During all hours of operation, the contractor shall maintain adequate on-duty personnel to comply with all terms and conditions of this contract. A minimum of one (1) staff member employed by the contractor will be stationed at each of the ~~three~~ concession areas ~~as described in Section D of this contract.~~ A staff member will be stationed at each concession area during hours of operation.

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

#### 4.7 INSURANCE

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

The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ 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 selected Proposer's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

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

The selected Proposer shall provide insurance coverage as follows:

- a. **WORKERS COMPENSATION AND EMPLOYER'S LIABILITY**  
Workers Compensation Insurance to apply for all employees in compliance with the "Workers Compensation Law" of the State of Florida and all applicable Federal laws. The City reserves the right not to accept exemptions to the Workers Compensation requirements of this solicitation.  
Employer's Liability Insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- b. **COMPREHENSIVE GENERAL LIABILITY**

Comprehensive General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00); and include Products/Completion Liability of One Million Dollars (\$1,000,000). Such certificate shall list the City as additional insured.

NOTE: If Comprehensive General Liability limits are less than One Million Dollars (\$1,000,000.00), the sum of Comprehensive General Liability limits and Excess Liability limits must equal no less than One Million Dollars (\$1,000,000.00).

c. AUTOMOBILE LIABILITY

Automobile Liability Insurance to include owned, non-owned, and hired, with minimum limits of One Million Dollars (\$1,000,000.00) each occurrence.

~~d. PROFESSIONAL LIABILITY~~

~~Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.~~

e. PRODUCTS/COMPLETED PRODUCTS OPERATIONS

Products/completed products operations with limits of not less than Two Million Dollars (\$2,000,000) annual aggregate.

f. COMMERCIAL CRIME

Commercial Crime Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate

The selected Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of A- VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1<sup>st</sup> Ave., Delray Beach, FL 33444.

4.8 PERFORMANCE BOND/LETTER OF CREDIT

The selected Proposer shall execute and deliver to the City, within five (5) days after the City issues a Purchase Order under this Contract, a Performance Bond or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of the Purchase Order, as surety for faithful performance under the terms and conditions of the Contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond or Unconditional Irrevocable Letter of Credit.

4.9 CERTIFICATIONS

Any Proposer which submits an offer in response to this solicitation shall, at the time of such offer, hold all the required licenses, permits, and certifications issued by the applicable State

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

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

All rental rates for beach umbrellas, chairs, cabanas and similar beach equipment shall be approved by the City Manager. Any increase in rental rates must have prior approval of the City Manager or his designee. All rentals of equipment shall include at a minimum a one-half day- (1/2) and full-day rental rate.

The Contractor shall furnish to the City a schedule of rental charges on all equipment. The contractor shall provide monthly reports of the income generated from the sales and the City may negotiate additional percentages.

5.10 ADVERTISING AND SIGNS

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

5.11 PARKING REQUIREMENTS

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

5.12 CONTRACTOR STAFF

- i. During all hours of operation, the contractor shall maintain adequate on-duty personnel to comply with all terms and conditions of this contract. A minimum of one (1) staff member employed by the contractor will be stationed at each of the ~~three~~ concession areas ~~as described in Section D of this contract~~. A staff member will be stationed at each concession area during hours of operation.

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

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

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NOTE: Items that are ~~struck through~~ are deleted. Items that are underlined have been added. All other terms and conditions remain as stated in the <solicitation type>.

### **End of Addendum**

#### **INSTRUCTIONS:**

Receipt of this addendum must be acknowledged as instructed in the solicitation document. Failure to acknowledge receipt of this Addendum may result in the disqualification of Respondent's response.



CITY OF DELRAY BEACH  
100 N.W. 1<sup>st</sup> AVENUE, DELRAY BEACH, FL 33444

## Solicitation Addendum

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**Addendum No.:** 3  
**Solicitation No.:** 2018-046  
**Project No.:** N/A  
**Solicitation Title:** Beach Equipment Rental Concessions  
**Addendum Date:** August 16, 2018  
**Purchasing Contact:** Ja'Anal McAden [mcadenj@mydelraybeach.com](mailto:mcadenj@mydelraybeach.com)

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**RFP 2018-046 IS HEREBY AMENDED AS SET FORTH HEREIN BELOW. CITY RESPONSES TO QUESTIONS POSED BY PROSPECTIVE PROPOSERS ARE ALSO PROVIDED BELOW. THIS ADDENDUM NO. 3 IS HEREBY INCORPORATED IN AND MADE A PART OF RFP 2018-046.**

### QUESTIONS AND RESPONSES:

**Q1. When a request is granted for additional set ups, but there is poor weather since the request is made in advance, what happens with the money? Is there a credit issued or is the money applied to another date? What department in the city is in charge of this?**

R1. If weather is inclement/rain and no beach operations take place on requested additional date – refund for the amount would be returned or credited to a future date. Parks and Recreation would communicate directly with the vendor of all aspects of contract compliance, including additional requested set-ups.

**Q2. Since we have the experience in running Delray beach for 16 years, there are months that we will need 100+ set ups most days to accommodate the residents and guests, because Delray is a popular destination from November through July. What is the proper format for sending in the requests that will be needed on a frequent basis? Daily requests? What are the city's protocols in place to assure the requests are granted and that the residents and guests are accommodated the way they are used to?**

R2. See Section 4.15 regarding written requests for additional chairs.

For any request for additional set-ups, the request must be submitted in writing via email [fisher@mydelraybeach.com](mailto:fisher@mydelraybeach.com) with the following payment:

**Q3. Since this RFP has a high minimum annual fee with a specific number of chairs, how do we get a credit for the the number of chairs that are not used on rainy or slow days during the off season since there are many days we have less equipment on the beach? Does the formula derived for the beach fee work in reverse? Or do we get a rollover amount for the unused chairs on one day to be applied on a busy day where additional chairs are needed to accommodate the public demand?**

R3. Formula is based on 250 chair occupancy based on average number of sunny days (235). Maximum number of chairs allowed in this RFP is 350. Formula included rain days. See Section 5.4

**Q4. The number of sets in this RFP is at 350 and the average minimum fee for the 5 year contract period is \$540,000. Using the past 16 year period of this contract as a basis, the increase this RFP dictates in rent is 1,250%, yet the increase in chairs is only 40%. Further, the population increase for this period is at 225%. Since there have been no complaints from any customers regarding how the beach concession has been run, and the current RFP stipulations would negativity impact the beach-going community, we strongly urge a revision to increase the number of chairs by 150%, which would be 625, without the additional fees. In this manner, the changes to the basics of the underlying RFP proposal would be in greater correlation to needs of the beach-going community and the City of Delray Beach, Florida.**

R4. Revision of RFP will not be made to include 625 set-ups. No question noted above.

**Q5. Section 5.4.ii, The RFP states that if there was to be beach erosion or other circumstances for a lowered count, please clarify and what would the credit formula be?**

R5. If maximum set-up reduction must occur due to erosion – credit formula would be: 70% of \$7.50 per set-up for each operating day of reduction

Example – erosion causes 100 sets to be removed

$100 \times \$7.50 = \$750 \times 70\% = \$525 \times \# \text{ of operating days reduced}$  exempld 30 days = reduction would be \$15,750

**Q6. Is the City aware that based on the formula of the number of sets allowed and the Annual fee set forth in this RFP plus any additional fees, there would have to be significant price increase to be paid by the customer (Delray's taxpayers and visitors) to be able to rent a beach chair at the Delray Municipal Beach?**

R6. Rental rates will be proposed by vendor and approved by City. Current rental rates are available and posted on the beach. The City understands that rental rates adjustments may be requested.

**Q7. Additional Amenities, Section 5.21, the terms are not clear with regard to a percentage of our revenue for any additional nominal sale items. In accordance with the RFP, there is a set Proposed annual fee to the city. Please clarify.**

R7. Additional amenities to be included in Tab 7 are items above and beyond the beach concession equipment. The revenue associate with any items proposed in Tab 7 would be negotiated. See Section 5.21.

**Q8. Section 5.9.b states there may be additional percentages negotiated regarding sales. Was this an oversight? The revenue portion of this RFP states any required payment to the city is based on the Proposed Annual Fee to be submitted to the city in monthly payment. Please clarify**

R8. Though not anticipated the negotiation of additional percentages will be based on the agreed amount between the contractor and the City and is tied to usage if necessary.

**Q9. Under Tab 6- Approach and Capacity, section F. i-v., this does not seem to apply to us and the nature of our business. Please clarify if this was an oversight.**

R9. Section F. i-v is a requirement of the RFP.

**Q10. Considering this RFP has a very high minimum fee with many restrictions, was the proper due diligence conducted to create a fair proposal? As stated in section 5.9.a. of this RFP, the rental rates to the customer need to be similar as in Dade, Broward and Palm Beach County, which they currently are, yet the structure of this RFP prevents us from doing that with the high minimum fee and very low equipment cap. As a point of reference, the beach concession for Ft Lauderdale is in it's first year of a 5 year contract totaling \$2,400,000, yet it's four times the size of Delray Beach with four times the amount of equipment and no equipment cap, yet Delray's minimum fee is even higher at \$2,700,000 with a fourth of the amount of equipment.**

R10. Minimum fee is based on total number of days of sunshine (235 average per year) time appx. 70% capacity rate (250 out of 350 max set-ups) times \$7.50 per set-up. 350 maximum set-ups allowed. Proposer to note areas of set-up on proposal.

The previous contract with a 5 year minimum was \$1,541,017 and only allowed maximum of 250 total set-ups. New contract will allow for 100 additional chairs.

Note that the new minimum amount is based on reduced days of sunshine and a % of maximum set-ups allowed. The previous contract had 10% yearly increase.

**Q11. Will the deadline for questions be extended?**

R11. No

**MODIFICATIONS:**

~~The deadline for submission of Proposals is August 21, 2018, at 2:00 p.m. local time.~~

The deadline for submission of Proposals is August 23, 2018, at 10:00 a.m. local time.

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**End of Addendum****INSTRUCTIONS:**

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