

**THE CITY OF DAYTONA BEACH**  
**HALIFAX HARBOR MARINA GASOLINE AND DIESEL FUEL**  
**INVITATION TO BID No. 0118-0640**



THE CITY OF DAYTONA BEACH  
BUSINESS ENTERPRISE – HALIFAX HARBOR  
P.O. BOX 2451  
DAYTONA BEACH, FLA. 32115

Issue Date: February 19, 2018

## INVITATION TO BID

The City of Daytona Beach, Florida, will receive bids for **HALIFAX HARBOR MARINA GASOLINE AND DIESEL FUEL, Invitation to Bid No. 0118-0640**, at the City of Daytona Beach Purchasing Division, City Hall Room 146, 301 S. Ridgewood Ave., Daytona Beach, Florida 32114, until **2:00 p.m., on March 5, 2018**, at which time bids will be opened publicly and read aloud. Bids received after said time will be returned unopened.

Sealed bids must be addressed to:

Joanne Flick, Purchasing Agent  
The City of Daytona Beach Purchasing Division  
301 S. Ridgewood Ave., Room 146  
Daytona Beach, FL, 32114

with "Sealed Bid for Citywide HALIFAX HARBOR MARINA GASOLINE AND DIESEL FUEL, ITB No. 0118-0640" plainly written on the outside of the envelope.

**SCOPE OF WORK** consists of Supplying the Halifax Harbor Marina with 89 octane unleaded gasoline and #2 Ultra low dyed sulfur diesel. Annual Estimated Project Magnitude is \$710,000 - \$869,000.

Bid Documents may be obtained as pdf files on-line at <http://purchasing.codb.us>. There is no charge for downloading bid documents. Contract Documents, including Drawings and Technical Specifications are on file at the Daytona Beach Purchasing Division, 301 S. Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114. All inquiries pertaining to this project which are mailed should be directed to Post Office Box 2451, Daytona Beach, Florida 32115-2451.

**A Non-Mandatory Pre-Bid Conference** will be conducted on February 26, 2018 at 2:00 PM, at Daytona Beach City Hall – Room 149B, 301 S Ridgewood Avenue, Daytona Beach, Florida, 32114. Interested Proposers are *urged* to attend.

The City of Daytona Beach, Florida, reserves the right to accept or reject any and all bids, or any portion of any bid, or to waive any informalities in the bidding.

Bids may be held by the City of Daytona Beach for a period not to exceed sixty (60) days from the date of opening of bids for the purpose of reviewing the bid and investigating the qualifications of bidders prior to awarding the contract. Contractors submitting bids to the City must comply with Article III of Chapter 30 of the Code of the City of Daytona Beach, Florida, "Minority and Women Owned Business Enterprises.

THE CITY OF DAYTONA BEACH  
VOLUSIA COUNTY, FLORIDA  
By: KIRK ZIMMERMAN, CPPB  
BUYER

Issue Date: February 19, 2018

## INSTRUCTIONS TO BIDDERS

**THESE INSTRUCTIONS ARE STANDARD FOR ALL BID SOLICITATIONS FOR GENERAL SERVICES ISSUED BY THE CITY OF DAYTONA BEACH. THE CITY MAY DELETE, SUPERSEDE, OR MODIFY ANY OF THESE STANDARD INSTRUCTIONS FOR A PARTICULAR SOLICITATION BY USE OF SPECIAL INSTRUCTION SHEETS.**

**1. BID DOCUMENTS.** The Bid Documents consist of the Invitation to Bid; these Instructions; Special Instructions, if any; the Standard Terms and Conditions; the Bid Proposal Form to be completed, signed, and submitted by the Bidder; and all additional forms provided by the City as part of this solicitation that are required to be completed and submitted by the Bidder as part of the Bid, regardless of whether these forms are described herein as exhibits or attachments to the Bid Proposal Form. Together, the Bid Proposal Form and the additional forms required to be submitted by the Bidder as part of the Bid, constitute the "Bid Package."

In making copies of Bid Documents available, the City does so only for the purpose of obtaining Bids and does not confer a license or grant to use the Bid Documents for any other purpose.

**2. COMPLETING THE BID.** In submitting the Bid, the Bidder must complete and include all Bid Package documents. In order for the Bid to be considered complete:

A. The Bidder must submit the information required, only on the forms provided by the City as part of the Bid Package, except where the Bid Documents specifically permit or require otherwise.

B. The City requests that the Bidder submit only the Bid Package. If the Bidder submits a Bid that includes any documents other than the Bid Package, these extraneous documents will be discarded. Only if the City awards a contract to Bidder will the Bidder be asked to sign the form contract included in this solicitation.

C. The Bid Proposal Form and the other documents included in the Bid Package, all contain blank spaces that the Bidder must complete. The Bidder must fill in these blank spaces in ink or by typewriter, and must initial with ink, all corrections and erasures to the information provided by the Bidder in these blank spaces.

D. Unless this solicitation contains Special Instructions allowing for partial or lot-by-lot bids, the Bidder must quote all unit prices and extended unit prices (if any) set forth in the Bid Package. If this solicitation allows for partial or lot-by-lot bids, the Bidder must comply with the Special Instructions in completing filling out the unit prices and extended unit prices set forth in the Bid Package.

E. The Bid Price (including unit prices and extended prices if applicable), must be stated in numerals.

F. If this solicitation requires unit prices and there is a conflict between the unit prices and the extended totals, the unit price will take precedence. Likewise, discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

G. The Bidder must not submit alternative bids unless this solicitation specifically authorizes alternate bids. If this solicitation specifically allows the submission of alternate bids, the Bidder must submit the standard and the alternative bid in order to be considered responsive.

H. The Bid may not contain qualifications or exceptions of any kind.

I. All other submittal requirements stated herein must be met.

**3. SIGNING THE BID.** The Bid Proposal Form, and all other Bid Package documents requiring the Bidder's signature, must contain an original signature of an individual who is authorized to bind the Bidder. The signature must be located in the space(s) marked for the Bidder's signature. Electronic signatures will not be accepted. In addition:

A. If the Bidder is a general partnership, its name and address must be stated, as well as the name and address of each member of the firm or partnership.

B. If the Bidder is a joint venture, the Bidder must provide on separate signed sheet(s) of paper along with the Bid Proposal documents provided by the City, the full legal names of all persons/firms comprising the joint venture.

C. The person signing the Bid Proposal Form on behalf of the Bidder must be the same person who signs all of the other Bid Package documents.

**4. REQUESTS FOR INTERPRETATIONS.** If the Bidder is in doubt as to the meaning of any of the Bid Documents or any other Contract Documents included in this solicitation, the Bidder may submit a written request to the City for an interpretation, care of the Purchasing Agent at the address set forth below for delivery of the completed bid. Such requests must be received prior to bid opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation of the Bid Documents issued by the City in the form of a written addendum will be deemed to be a part of the Bid Documents.

Deadline for submitting questions will be 10 calendar days prior to bid due date.

No oral clarification or interpretation will be binding.

**5. ADDENDA TO BID DOCUMENTS.** Prior to bid opening, the City may on the City's own initiative or in response to a request for clarification, furnish addenda for additions or alterations to these Instructions, the Bid Documents, and to any Scope of Work, or other Contract Documents previously supplied by the City. In addition, the City may by addendum extend the date scheduled for Bid Opening.

The Purchasing Agent will make reasonable efforts to notify all potential bidders of the issuance of an Addendum. The Purchasing Agent will post Addenda on the City's official web site. The City's Purchasing web site address is <http://purchasing.codb.us>.

**However, the Bidder is solely responsible for ensuring that the Bid Package submitted reflects all such Addenda.**

**6. BID ENVELOPE.** The Bid, including the Bid Form, all required Bid Documents, must be returned in an opaque, sealed envelope. The envelope must display the name and address of the Bidder, the bid number and title of the bid/contract as set forth on the Invitation to Bid, and the date and time scheduled for bid opening. The envelope must be addressed to:

Purchasing Agent  
City of Daytona Beach  
Room 146  
301 S. Ridgewood Avenue  
Daytona Beach, FL 32114

**7. SUBMISSION OF BID.** The Bidder must submit the Bid by mail or hand delivery at or prior to the time fixed for bid opening in the Invitation for Bids. A bid submitted after the time fixed for bid opening will not be accepted. The Bid must be delivered to the Purchasing Agent at the address above. A bid submitted to any other location will not be considered. Telephonic, electronic, and faxed bids will not be considered.

**8. AMENDMENT AND WITHDRAWAL OF BID.** The Bidder may amend or withdraw the Bid at any time prior to bid opening, but only with prior written notice to the Purchasing Agent, submitted in the same manner as the Bid. The notice must be signed by a properly authorized agent of the Bidder.

Mere negligence on the part of the Bidder in preparing the Bid does not constitute a right to withdraw the Bid subsequent to bid opening.

Amendments may be made only through the submission of a complete Bid Package, along with a written statement, signed by the same person who signed the Bid Package documents, that the submission is intended to fully replace the Bidder's earlier submission. The City is not required to honor an amendment that fails to comply with this Paragraph 8.

**9. DISQUALIFICATION OF BIDDERS.**

A. **Only One Bid Permitted:** The Bidder may submit only one Bid. If the Bidder submits more than one bid for the work involved, all bid proposals submitted from the Bidder will be rejected.

B. **Collusion:** If the City determines that collusion exists among bidders, the City will reject the bids of all participants in the collusion.

**10. BID OPENING.** Bid opening will be scheduled at the location and on the date and time specified by the Invitation for Bid, or by any applicable Bid Addenda that the City may issue. At bid opening, the City will open and record the Bid so long as it is proper and has been timely submitted. In recording the Bid the City will state the name of the Bidder and the Bid Price.

The Bidder is solely responsible to ensure that the Bid is time- and date-stamped by the Purchasing Agent prior to bid opening. Late bids will be rejected and returned unopened.

The Bidder may be present at bid opening but is not required to be present.

**11. UNIT PRICING AND QUANTITIES.** If this solicitation requests submission of unit prices: (i) the successful Bidder will hold all unit prices bid, firm for the duration of the Contract, including any extension thereof, unless specifically authorized by the Contract Documents; and (ii) quantities stated as an estimate only and no guarantee is given or implied as to quantities that will actually be required during the contract period.

**12. THE BID IS AN OFFER.** In submitting the Bid, the Bidder certifies that the Bidder is making a firm offer that will remain open for 60 days following bid opening unless properly and timely withdrawn by the Bidder prior to Bid Opening in conformance with these Instructions unless the City, in the City's sole discretion, rejects the Bid after Bid Opening. Extensions of time beyond the 60 day-period will only be by agreement of the City and the Successful Bidder.

**13. FEDERAL TAXES.** The Bid Price will be exclusive of all federal taxes. If the Bidder believes that certain other taxes are properly payable by the City, the Bidder may list such taxes separately in each case directly below the respective item Bid Price. Tax exemption certificates will be furnished upon request.

**14. BID PRICE INCLUSIVE OF COSTS.** The Bid Price is inclusive of all of the Bidder's direct and indirect costs of performing the Work.

**15. PUBLIC RECORDS.** Sealed bids received by the City pursuant to the Invitation to Bid will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all bids will be open for a personal inspection by any person pursuant to Public Records Law.

If the Bidder believes that the Bid or any portion thereof is exempt from disclosure under the public records law, the Bidder must state the grounds for this position in CAPITAL LETTERS on the cover sheet accompanying the sealed bid. The Bidder will be contacted prior to the opening of the Bid and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Bidder may in writing request the return of the sealed bid.

**16. BID OPENING RESULTS.** The Bidder may secure information pertaining to Bid Opening results by visiting the Purchasing Division Office Monday through Friday between 8:00 am and 5:00 pm, or by emailing a request to [purchasing@codb.us](mailto:purchasing@codb.us). Copies of bid tabulation sheets will be furnished upon request and receipt of a self-addressed stamped envelope.

**17. BIDDER CAPABILITY/REFERENCES.** Prior to contract award, the City may require Bidder to show that Bidder has the necessary facilities, equipment, ability, and financial resources to perform the work specified in a satisfactory manner and within the time specified.

In addition, the City may require Bidder to demonstrate the Bidder has experience in work of the same or similar nature as the work required herein, and to provide references satisfactory to the City.

**18. REVIEW; BASIS OF AWARD.** Bids will be reviewed in accordance with the procedures set forth in these Instructions to Bidders and the applicable provisions of the City Purchasing Code (Chapter 30 of the City Code of Ordinances). Any contract award pursuant to the Invitation to Bid will be made on the basis of the criteria for award of bids provided in the Purchasing Code.

**19. LOCAL PREFERENCE.** The Purchasing Code, Chapter 30, Code of the City of Daytona Beach provides for a preference to local vendors whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.

As used in City Code, the term, "local vendor" means a person or business entity which has maintained a permanent place of business with full-time employees within the city limits of the City of Daytona Beach for a minimum of six months prior to the date bids or proposals were received for the purchase or contract at issue, which generally provides from such permanent place of business the kinds of goods or services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

Pursuant to City Code, if the lowest responsive bid is submitted by a non-local vendor, and a bid submitted by a local vendor is within 10% of the lowest bid, then these two vendors will each have the opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid within five working days after bid opening. The bid will be awarded to the bidder submitting the lowest responsive bid or final bid. In case of a tie between a local vendor and a non-local vendor, the bid will be awarded to the local vendor.

If the Bidder intends to qualify as a local vendor, the Bidder must complete and sign the Local Vendor affidavit and submit it as part of the Bid. A Bidder who fails to properly complete and sign this affidavit or submit it with the Bid, will not further considered for local preference.

If the Bidder submits a properly completed Local Vendor affidavit as part of its Bid, the City reserves the right to verify that the Bidder meets the definition of Local Vendor, including by requiring the Bidder to supply additional documentation. In all instances, the City will be the final arbiter as to whether the Bidder qualifies for local preference.

With certain exceptions, application of local preference is discretionary. For more information on how the Local Preference may apply, see the Purchasing Code.

**20. IDENTICAL TIE BIDS.** If there are two or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria, the tie will be awarded to the following in order of preference: a) the bidder qualifying for local preference under Code 30-86; b) the bidder in compliance with the drug free workplace certification requirements set forth in Florida Statutes 287.087; or c) the most responsible bidder as defined under the City Code 30-82 (9)(c). Please see the Drug Free Workplace form incorporated into this Invitation.

**21. RIGHT TO ACCEPT OR REJECT BIDS.** The City will reject bids which contain modifications, or which are incomplete, unbalanced, conditional, obscure, or which contain additions not requested, or irregularities of any kind, or which do not comply in every respect with these Instructions to Bidders and the Contract Documents, unless the City in its sole discretion that the non-compliance is minor.

The City does not bind itself to accept the minimum bid stated herein, but reserves the right to accept any bid, which in the judgment of the City will best serve the needs and interests of the City.

**22. RESERVED**

**23. CONTRACT DOCUMENTS.** The draft Contract that will be executed by the City and the successful Bidder is included in these Bid Documents. The Contract will include, by attachment or by reference, the Bid Documents (including Addenda and Standard Terms and Conditions), the Bid Package submitted by the successful Bidder, the Resolution or Ordinance awarding the bid, any purchase orders requisitioning goods pursuant to the Contract, and any amendments that may after the date of award be executed by the successful bidder, if any, and the City. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth in this Contract.

**24. PURCHASE ORDERS.** All purchase orders issued pursuant to the Contract will be deemed to incorporate all terms and conditions of the Contract regardless of whether the Contract or Contract Documents are expressly referenced therein. In case of conflicts between a purchase order any other with provisions of the Contract Documents, the other provisions of the Contract Documents will control.

**25. PUBLIC ENTITY CRIMES.** Any party submitting a bid in response to this invitation must execute the enclosed Form PUR 7068, "SWORN STATEMENT UNDER SECTION 287.133(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES," and enclose it with the bid/proposal. The form is included on the bid proposal pages of the Bid Documents. All blank spaces in the Form must be completed.

**26. SUBMISSION OF INSURANCE.** The Successful Bidder must submit any required insurance on or before submission of the signed contract or prior to issuance of a notice to proceed.

**27. COMPLIANCE WITH LAWS.** The Bidder will be responsible for complying with all applicable federal, state, and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work.

The Successful Bidder must always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees, including the Occupational Safety and Health Administration's (OSHA) Excavation-Safety Standard, 29 C.F.R. § 1926.650 Sub Part P, and Chapter 90-96 Florida Statutes.

The Successful Bidder will protect and indemnify City and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by the

Successful Bidder, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees.

At time of bid submittal, the Bidder must hold the required licensure to be the prime contractor for all work to be performed under this solicitation. Any subcontractors or sub-consultants whom the Bidder proposes to use to perform work under this solicitation must also hold the required licensure at the time of bid submittal. Required licensure must be maintained in full force and effect during the contract term.

**28. MAINTENANCE OF LICENSES.** The Bidder will maintain all required licenses in full force and effect during the contract term.

**29. CITY'S FORM TERM SERVICES CONTRACT.** The City's form service contract, which is included in this solicitation, contains additional terms and conditions, including indemnification and insurance requirements, that the Bidder should review prior to submitting the Bid. The City reserves the right to make minor changes to the form contract prior to execution by the successful bidder to correct errors, make other minor formatting changes, or for legal sufficiency. The City will provide the successful bidder the final contract for execution.

**30. BIDDER RESPONSIBILITY FOR PREPARATION COSTS.** Neither the City nor the City's officers or agents will be liable for the costs incurred by the Bidder in reviewing or responding to this solicitation.

**31. COOPERATIVE PURCHASING.** All bidders awarded contracts from this solicitation are required to permit governmental entities in Volusia County to participate in the contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs. At the option of the awarded Proposer, the use of the contract resulting from this solicitation may be extended to other governmental agencies, cities, counties, and political subdivisions.

## **SPECIAL INSTRUCTION SHEET**

**SI 1 NON-EXCLUSIVE CONTRACT.** Award of this Contract will impose no obligation on the part of the City to use the successful bidder for all work of this type that may be required during the Contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if the City deems such action to be in the City's best interests. In the case of multiple term contracts, this provision will apply separately to each item.

### **SI 2 BIDDER QUALIFICATIONS AND REQUIRED SUBMISSIONS**

**Minimum Qualifications.** In order to be considered qualified to perform the requested services, the Bidder must have all required permits, must have an active, permanent, and successful operation within the State of Florida for a minimum of three years prior to the date of submission of bids, and must otherwise have sufficient organizational capacity, equipment, and facilities to provide the requested services.

## SUBMITTAL CHECKLIST

*The following are items that are required to be considered responsive. Make sure that each blank is filled out. Use NA (not applicable) rather than leaving blank.*

included	Item(s) Required
	Bid Proposal Form
	Bid Schedule
	Non-Collusion Affidavit
	Florida Public Entity Crime Form
	Local Contractor Affidavit <i>only if filing for local preference</i>
	Drug Free Workplace / Tied Bids
	Label the outer most package with the following: Bid Number Date of the Opening Contractor Name and Address

**BID PROPOSAL FORM**  
**HALIFAX HARBOR MARINA GASOLINE AND DIESEL FUEL**  
**ITB #: 0118-0640**

TO THE MAYOR AND COMMISSIONERS  
THE City OF DAYTONA BEACH, A FLORIDA MUNICIPAL CORPORATION

Dear Mayor and Commissioners:

This Bid is submitted by \_\_\_\_\_  
*(insert Bidder's full legal name; include D/B/A if applicable)*

Business Address: \_\_\_\_\_  
*(include P.O. Box/street address, city, state and zip code)*

Business Phone: \_\_\_\_\_ Business Fax: \_\_\_\_\_  
*(include area code) (include area code)*

Business Email: \_\_\_\_\_  
*(leave blank if n/a)*

The undersigned, as BIDDER or BIDDER's authorized representative, hereby declares and affirms each of the following:

1. That BIDDER has had the opportunity to examine the facilities where the services are to be performed and is fully informed in regard to all conditions pertaining to the site(s).
2. That BIDDER has thoroughly examined the Contract Documents and that BIDDER is sufficiently knowledgeable of the services to be performed.
3. That, pursuant to and in compliance with the Bid Package, including all Contract Documents, the BIDDER hereby agrees to furnish all labor, materials, and equipment required to perform the services in strict accordance with the Contract Documents and for the Unit and/or Lump Sum prices herein for the prices stated in the attached Bid Schedule.
4. That BIDDER agrees to indemnify and hold harmless the City any other interests as set forth in the Contract Documents

## BID PROPOSAL FORM, cont.

5. That insofar as the attached Bid Schedule includes extended unit prices, the use of extended unit quantities will not be construed to be a guarantee that the City will purchase such quantities if a contract is awarded; and that, subject to the terms and conditions of the Contract, the Bidder will be entitled to payment based upon the services performed and accepted, as specified in the Contract Documents, .

6. That BIDDER has received the following Addenda (*leave blank if inapplicable*):

No. \_\_\_\_\_ Dated: \_\_\_\_\_ No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_ No. \_\_\_\_\_ Dated: \_\_\_\_\_

(*list any additional Addenda by number and date*): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. That BIDDER has completed the required information required in this Bid Proposal Form and other documents comprising the Bid Package truthfully.

8. That this Bid is an offer, and may be accepted by the City's issuance of a Contract to the BIDDER. BIDDER will be fully bound by all contractual terms and conditions set forth herein; provided, however, that if the Bid Documents call for alternative bids any alternative bids not specifically accepted the City in the notice of award will not be a part of the Contract.

9. In the event that any notice needs to be sent during the course of any contract that may result from this solicitation please specify the name, address, phone, fax, and email of the person to contact.

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

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

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

***(Remainder intentionally left blank)***

## BID PROPOSAL FORM, cont.

10. That BIDDER is (mark the appropriate box and include the additional information, as applicable):

- ☐ An individual person/sole proprietor
- ☐ A Florida corporation/ limited liability company
- ☐ A foreign corporation/limited liability company authorized to do business in Florida\*  
\_\_\_\_\_ (specify state of incorporation/formation)
- ☐ A Florida limited partnership
- ☐ A foreign limited partnership authorized to do business in Florida\*  
\_\_\_\_\_ (specify state of incorporation/formation)
- ☐ A general partnership (provide partner names on separate, signed sheet of paper)
- ☐ A joint venture\*\*
- ☐ Other \_\_\_\_\_ (specify, including type of entity)

\* (If BIDDER is a foreign corporation or foreign limited liability company, attach proof of registry from State of Florida)

\*\* (provide on separate signed sheet(s) of paper the full legal names of all persons/firms comprising the joint venture.

11. That the name, title, mail address, cell phone and email address of the person who will serve as the Designated Representative of BIDDER if the contract is awarded to BIDDER, is as follows:

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In signing below, I certify that I am the above-named BIDDER or a person duly authorized by BIDDER to bind BIDDER to these terms and conditions.

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

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

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

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

# FEE SCHEDULE

## HALIFAX HARBOR MARINA GASOLINE AND DIESEL FUEL

### ITB NO. 0118-0640

For bidding purposes the amounts in lines 1 & 6 the City is using a placeholder for the average price on 2/5/2018 for each fuel. City will pay the actual rack rate for the date invoiced plus the fixed add-on per gallon amount as stated on this fee schedule.

Lines 4 & 9 represent the estimated annual quantity. The City is ultimately comparing the add-on rate of each bidder. The City requires an estimated not to exceed amount to present to the Daytona Beach City Commission at time of approval. This fee schedule represents the estimated annual do not exceed amount for each fuel.

<b>Unleaded Gasoline (89 Octane)</b>	1. Avg. Rack rate per gallon on 2/5/18	\$ 2.06
	2. Fixed Add-On per gallon	\$
	3. Total Price per gallon (lines 1+2)	\$
	4. Estimated Annual Quantity	110,000 gallons
	5. Total Estimated Cost (line 3 x line 4)	\$
<b>#2 Diesel Fuel, Ultra Low Sulfur Dyed</b>	6. Avg. Rack rate per gallon on 2/5/18	\$ 2.16
	7. Fixed Add-On per gallon	\$
	8. Total Price per gallon ( lines 6+7)	\$
	9. Estimated Annual Quantity	125,000 gallons
	10. Total Estimated Cost (line 8 x line 9)	\$
<b>Total Estimated Annual Cost for Both Fuels (lines 5 + 10)</b>		\$

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

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

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

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

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

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

Phone: \_\_\_\_\_

**NONCOLLUSION AFFIDAVIT OF PRIME BIDDER**

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

\_\_\_\_\_, being first duly sworn deposes and says that:

- (1) He is \_\_\_\_\_ of \_\_\_\_\_.  
the Bidder that has submitted the attached Bid;
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Daytona Beach, FL (Local Public Agency) or any person interested in the proposed Contract;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

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

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

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

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

Subscribed and sworn to before me

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

\_\_\_\_\_  
(Signature of Notary Public)

My commission expires: \_\_\_\_\_

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

- City of Daytona Beach  
0118-0640: Halifax Harbor Marina Gasoline & Diesel Fuel

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES, cont.**

- (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, will be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months will be considered an affiliate.
5. I understand that a “person” as defined in Paragraph 287.133(l)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on Information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (*Indicate which statement applies.*)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (*attach a copy of the final order.*)

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES, cont.**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
[Signature]

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Personally known \_\_\_\_\_

OR Produced Identification \_\_\_\_\_ (Type of identification)

Notary Public - State of \_\_\_\_\_

By: \_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
(Printed typed or stamped  
commissioned name of Notary Public)

Form PUR 7068 (Rev. 06/18/92)

## LOCAL VENDOR AFFIDAVIT

*Complete and submit this form ONLY if you qualify for local preference as provided in the City of Daytona Beach Purchasing Code.*

*A copy of the Bidder's Daytona Beach Business Tax Receipt must be submitted with this Affidavit.*

NAME OF BIDDER: \_\_\_\_\_

LOCAL BUSINESS ADDRESS *(street address being used to claim Local Preference, including, zip code):*

\_\_\_\_\_

The undersigned certifies under penalty of perjury each of the following:

The Local Business Address has continuously been used as a Permanent Place of Business with at least one full-time employee since \_\_\_\_\_.  
*(Insert date)*

The Local Business Address has consistently offered or provided the goods or services being solicited by the City of Daytona Beach during the time referenced above.

The Local Business Address has not been established with the sole purpose of obtaining the advantages that may be granted pursuant to the Local Preference provisions of the City of Daytona Beach Purchasing Code.

\_\_\_\_\_  
Signature *(Must be same person as person signing the Bid Proposal)*

\_\_\_\_\_  
Print Name/Title

Subscribed and sworn to before me

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

\_\_\_\_\_  
(Signature of Notary Public)

My commission expires: \_\_\_\_\_

**The City of Daytona Beach reserves authority to require a copy of the corporate charter, corporate income tax filing return, and any other documents(s) to evaluate the Bidder's Local Preference claim.**

## DRUG-FREE WORKPLACE CERTIFICATION

**IDENTICAL TIE BIDS:** - If there are two or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria, the tie will be awarded to the following in order of preference: a) the bidder qualifying for local preference under Code 30-86; b) the bidder in compliance with the drug free workplace certification requirements set forth in Florida Statutes 287.087; or c) the most responsible bidder as defined under the City Code 30-82 (9)(c).

In order to have a drug-free workplace program, a business will:

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

---

(Signature)

# HALIFAX HARBOR MARINA GASOLINE AND DIESEL FUEL

## SPECIFICATIONS:

**1. Introduction.** The City of Daytona Beach is seeking bids for the purchase of the following types of marine fuels (for off-road use) for resale at Halifax Harbor Marina:

- a. Unleaded Gasoline, 89 octane rating. Must meet the specifications of the State of Florida, Department of Agriculture and Consumer Services, with minimum octane rating of:  $R + M/2 = 89$ . Non-ethanol Detergent type. E-10 is not acceptable. –
- b. #2 Ultra Low Dyed Sulfur Diesel –Must be suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications. Additional requirements:

Gravity: 36.1                      Minimum Cetane: 45  
Flash: 145 Degree      Maximum Sulfur Content: .015%  
Viscosity at 100 Deg. 30 to 45  
5% bio diesel in the diesel fuel will not be accepted.

Should the aforementioned fuels, when samples have been analyzed by the State of Florida inspectors, fail to meet the above-cited specifications, the supplier will be required to correct these deficiencies promptly and at their expense.

**2. Scope:** It is the intent of this ITB to establish a contract for furnishing Halifax Harbor Marina of the City of Daytona Beach, Florida for the purchase of the marine fuels referenced above, as specified, for a period of three (3) years beginning May 1, 2018 through April 30, 2021 or City Commission approval, whichever occurs later.

**3. Background/Facilities:** Fueling facility is located at 450 Basin Street, Daytona Beach, FL 32114, has 300' of fuel docks, two (2) gasoline and two (2) diesel pumps, and two (2) 10,000 gallon in-ground tanks. All equipment is owned by the Marina. Fuel sales are conducted from a Harbormaster's building, which also houses a yacht broker. Approximately 430 slips are located in the South Basin and an additional 120 slips are located in the North Basin.

The City has historically purchased approximately 110,000 gallons per year of the Unleaded Gasoline and 125,000 gallons per year of #2 Ultra Low Dyed Sulfur Diesel. Historically contractors have been asked to deliver approximately 4,000-5,000 gallons of fuel with each delivery. But this information is historical only and any Contractor awarded a contract pursuant to this Invitation to Bid (ITB) will be required to supply whatever quantities of these fuels are needed at the Halifax Harbor Marina while the Contract is in effect.

**4. Delivery:** Shipping terms will be FOB Halifax Harbor Marina. Title and risk of loss of the fuel will not be deemed to pass until delivery has been made into the Marina's fuel tanks. Delivery Hours are 7:00 AM to 6:00 PM, 7 days a week. The Contractor will determine how they deliver the fuels whether by tanker or wagon.

**5.Compensation:** . For each gallon delivered, the City will pay the Contractor a Delivery Fee. The Delivery Fee will be assessed by the Contractor on a per gallon delivered basis, and will fully compensate the Contractor for all of Contractor's costs of providing services herein, except for cost of fuel and taxes, and provide any profit that the Contractor may make under the Contract. In addition to paying the Delivery Fee, the City will reimburse the Contractor for Contractor's cost of purchasing the fuel delivered, based on the Rack Rate paid by Contractor at the time and place of acquiring the fuel from the terminal; and pay any taxes owed on the City's purchase of the fuel. The City is exempt from State Sales Tax. Therefore, any state sales taxes should be removed from the invoice. The City can provide a tax exemption certificate upon request to the Contractor at the beginning of the Contract.

The Contractor will be required to include with each invoice, a copy of the invoice/receipt for Contractor's purchase of the fuel from the terminal, broken down in sufficient detail to verify the Rack Rate.

**6. Service:** The Contractor shall provide requested amounts and types of fuel within 24 hours of order placement, including weekends and holidays.

**7. Shortage of Supply:** In the event of a shortage of the required fuel, whether imposed by governmental agency or by market conditions, the Contractor must deliver to Halifax Harbor Marina the highest quota available of the fuels allocated by the supplier to the Contractor.

## EXHIBIT A: DIESEL FUEL INVOICE SAMPLE

GATE FUEL SERVICE, INC. 00011209.13.00171.0921.1015

County	Order#:	Vendor #	B.O.L.#
VOLUSIA			
Customer P.O.#		Delivery #	

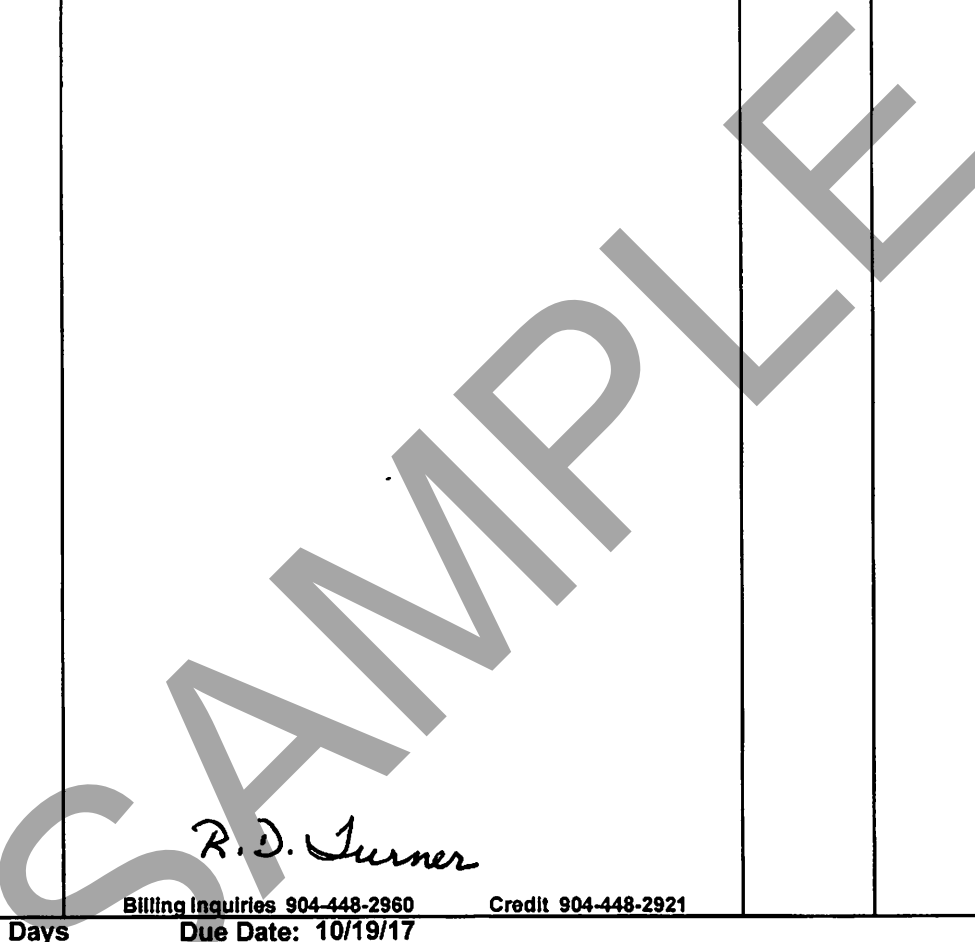
Invoice#

Page#

Inv.Date:

09/19/17

Account#:

Brch/Plnt	Item	Description	Quantity	Price	Total
FL70	308015	DYED OFF ROAD ULTRA LSD FLORIDA POLLUTANT FEE FEDERAL TAX - DIESEL Net Price S	3963.0	2.03050 .02072 .00314 2.05436 Per GA	8,141.43
<div style="text-align: center;">  </div>					
		<i>R.D. Turner</i> Billing Inquiries 904-448-2960      Credit 904-448-2921			
Terms: Net 30 Days		Due Date: 10/19/17		Total	8,141.43

PLEASE DETACH THIS PORTION AND RETURN WITH YOUR REMITTANCE

18497  
 CITY OF DAYTONA BEACH/HALIFAX HARBOR  
 450 BASIN STREET  
 MARINA  
 DAYTONA BEACH FL 32114



Account:

Total Due: 8,141.43

Inv.Date: 09/19/17

Invoice:

Amount Enclosed: 8141.13☐ CHECK HERE TO INDICATE MESSAGE ON BACK

GATE FUEL SERVICE, INC

PO BOX 40505

JACKSONVILLE FL 32203-0505



## EXHIBIT A: 89 OCTANE INVOICE SAMPLE

GATE FUEL SERVICE, INC. 00011209.13.00171.0921.1015

County	Order#:	Vendor #	B.O.L.#
VOLUSIA			
Customer P.O.#		Delivery #	

Invoice#  
Page#  
Inv.Date:  
Account#:

1  
09/19/17

Brch/Plnt	Item	Description	Quantity	Price	Total
FL70	1890	ETHANOL-FREE 89 MARINE FLORIDA POLLUTANT FEE FEDERAL TAX - GASOLINE FLORIDA STATE EXCISE-GAS FLORIDA COUNTY TAX - GASOLINE Net Price S	3935.0	2.56780 .02072 .18614 .17525 .19400 3.14391 Per GA	12,371.29
<p style="text-align: center;"><i>R. D. Turner</i></p> <p>Billing Inquiries 904-448-2960 Credit 904-448-2921</p>					
Terms: Net 30 Days Due Date: 10/19/17					Total 12,371.29

PLEASE DETACH THIS PORTION AND RETURN WITH YOUR REMITTANCE

SHIP TO  
18497  
CITY OF DAYTONA BEACH/HALIFAX HARBOR  
450 BASIN STREET  
MARINA  
DAYTONA BEACH FL 32114



Account:  
Total Due: 12,371.29  
Inv.Date: 09/19/17  
Invoice:

Amount Enclosed: 12,371.29☐ CHECK HERE TO INDICATE MESSAGE ON BACK

GATE FUEL SERVICE, INC

PO BOX 40505

JACKSONVILLE FL 32203-0505



## GENERAL SERVICES CONTRACT CONTRACT NO. 0118-0640

**THE PARTIES TO THIS CONTRACT** are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and **[insert full legal name of CONTRACTOR, include state where formed if CONTRACTOR is anything other than an individual person]** ("CONTRACTOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

**Section 1. Scope of Services.** CONTRACTOR will provide as needed supply of Unleaded Gasoline and Sulfur Diesel Gasoline to the CITY's Halifax Harbor Marina, as further described in Exhibit A, attached hereto and incorporated herein by reference.

**Section 2. Work Authorizations Required.** This Contract, in and of itself, does not require the Contractor to provide any services, or require the City to pay for such services. No product will be deemed ordered, and no obligation will arise to pay for services provided, except when specifically authorized by a telephone call from an authorized City representative placed to the Contractor in accordance with the City's procurement policies. The telephone call will generally consist type of fuel and quantities, with reference to the units and prices set forth in the Bid Schedule, consistent with the provisions of this Contract; Contractor will deliver within 24 hours, including weekends and holidays. No verbal instructions may alter the terms and conditions of this Contract. In case of a conflict with a Work Authorization, this Contract will govern.

**Section 3. Fees and Payments; Limitations.**

(a) Unless the Exhibits specifically provides for reimbursement of expenses, the Fee described herein will be CONTRACTOR's sole compensation for the services to be provided.

(b) The CITY will pay Contractor the Delivery Fee and other costs referenced in Exhibits A and B for fuel delivered in accordance with Contract requirements.

(c) Except for where reimbursement of costs is specifically provided for in Exhibits A or B, CONTRACTOR will be solely responsible for all of costs CONTRACTOR incurs in meeting its obligations herein.

**Section 4. Billing; Manner of Payment.** In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms are as follows:

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR must separately invoice the CITY for each order placed. Itemized lines with be listed for i) rack rate plus add-on fee ii) separate lines will describe each tax charged to the CITY. CONTRACTOR may invoice the CITY per delivery, after delivery has been made.

(b) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. Where payment is for the cost incurred for certain reimbursables (such as for subcontractors or air travel), the invoice must include proof that CONTRACTOR has paid such costs.

(c) The CITY will within 30 days after receipt of an invoice notify the CONTRACTOR that the invoice is improper, or pay CONTRACTOR the amount due.

**Section 5. Standard of Performance.** CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

**Section 6. Relationship between Parties.** This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also responsible for the performance of CONTRACTOR's subcontractors.

**Section 7. Documents.** All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONTRACTOR during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required.

**Section 8. Public Records.**

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provide to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:**

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

### **Section 9. Effective Date and Term.**

The Effective Date of this Contract is May 1, 2018 or the date on which the last Party signs it, whichever is later. The Term of this Contract is 3 years.

If this Contract specifically provides that some or all of CONTRACTOR's services will be required only after issuance of a CITY work authorization, any work authorizations previously issued by the CITY will remain in effect after the expiration of this Contract unless the CITY terminates this Contract due to CONTRACTOR's material breach after notifying CONTRACTOR to suspend such services as provided below.

### **Section 10. Termination of Contract.**

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

In either instance described above, upon termination CONTRACTOR will immediately discontinue all services affected, unless the notice directs otherwise, and deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and services of whatever type or nature as may have been accumulated by CONTRACTOR in performing this Contract, whether completed or in process.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in subsection (b) of this Section for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

**Section 11. Suspension of Services.** If the notice of material breach issued by the CITY pursuant to the preceding Section so directs, CONTRACTOR will suspend services immediately upon receipt thereof, other than the work required to remedy the material breach.

**Section 12. Indemnification.** CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally

wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or use by CONTRACTOR in the performance of this Contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

**Section 13. Insurance.** *[Risk management needs to approve this provision for every contract.]*

CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

**(a) Coverage and Amounts.**

**(1) Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage. If CONTRACTOR wishes to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

**(2) Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. Contractor's Commercial General Liability insurance policy shall provide coverage to Contractor, and City when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of City in Contractor's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$1,000,000. The Risk Manager for the CITY may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

**> [Risk Management to insert all other types and amounts of coverage requirements here]**

**(b) Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered

as itemized above, the amounts of insurance applicable to each hazard, the expiration dates. The certificates will also contain the following language as to cancellation:

"In the event of cancellation of this policy by the insurer or any insured, this Company will give not less than 30 days advance written notice to:

Risk Manager  
The City of Daytona Beach  
P.O. Box 2451  
Daytona Beach, Florida 32115-2451"

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

**(c) Cancellation; Replacement Required.** CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right or replace the canceled policy at CONTRACTOR's expense of CONTRACTOR fails to do so.

**(d) Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Management Division of the CITY that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

**(e) Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of by the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Contract.

**Section 14. Notice.** Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving email followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:  
Attn: John Bauchman, Halifax Harbor Marina General Manager  
City of Daytona Beach  
125 Basin Street, Suite 100  
Daytona Beach, FL 32114  
Email: [Bauchmanjohn@codb.us](mailto:Bauchmanjohn@codb.us)

To the CONTRACTOR:  
Attn: >contact name

>Contractor name  
>address  
>city, state, zip  
Email: >email

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

**Section 15. Personnel.** CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

**Section 16. CITY's Responsibilities.** The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

**Section 17. Limitation on Waivers.** Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

**Section 18. Dispute Resolution.** If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

**(a) Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

**(b) Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend will include, at a minimum, a senior

level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

## **Section 19. General Terms and Conditions.**

**(a) Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

**(b) Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

**(c) Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR.

**(d) Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

**(e) No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR's services under this Contract.

**(f) Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

**(g) Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

**(h) Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

**(i) Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

**(j) Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

**(k) Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

**(l) Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

**(m) Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants that he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

**(n) Incorporation of ITB and Proposal.** The CITY's Invitation to Bid 0118-0640, and the CONTRACTOR's responsive proposal are incorporated herein by reference as Composite Exhibit C. Composite Exhibit C is not attached but will remain on file in the Office of the City Clerk. In case of conflicts between the ITB and Proposal, the ITB will govern. In case of conflicts between Composite Exhibit C and other provisions of this Contract, including Exhibits A and B, this Contract will govern.

[continued on the next page]

**(o) Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

**THE CITY**

**>CONTRACTOR**

By: \_\_\_\_\_

***Derrick L. Henry, Mayor***

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

Attest: \_\_\_\_\_

Letitia LaMagna, City Clerk

Approved as to legal form:

By: \_\_\_\_\_

Robert Jagger, City Attorney

By: \_\_\_\_\_

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

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

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

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**EXHIBIT A: Scope of Services [to be provided and labeled—discard this sheet]**

**[Exhibit A should be a separately labeled scope of services statement, even if a scope was included in the RFP. Reasons: (i) changes to the scope may be negotiated after the RFP was issued, and these changes need to be memorialized as part of the contract; (ii) in administering the contract the project manager may find it easier to locate the scope as a direct attachment to the form contract instead of searching for the scope within a thick RFP document; (iii) often the scope in an RFP includes non-scope materials which should go elsewhere or which are already covered by this form (see below).**

**If you create Exhibit A by cutting and pasting from the Scope within the RFP, please: (i) remove all text that is not directly related to the negotiated scope, such as the scoring or proposals, items that were ultimately dropped from the scope during negotiations, and payment terms; and (ii) add any additional language needed, such as deadlines for deliverables, items of service that were not originally addressed in the RFP or that need to be modified in the RFP.**

**If the scope section (or any other provision) of the RFP contained non-scope terms that are at odd with this form contract, please discuss with Purchasing or Legal. To the extent of conflicts those provisions will be trumped by the boilerplate within this contract form—this form will need to be changed is changed.]**

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Exhibit B: **[Fee/Price]** Schedule  
**[ATTACH AND DISCARD THIS SHEET]**

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*Composite Exhibit C is not attached. It will be kept on file in the Office of the City Clerk.*

***[Delete this page if this contract is not result of ITB/RFP.]***

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