



**THE CITY OF DAYTONA BEACH  
OFFICE OF THE PURCHASING AGENT**

Post Office Box 2451  
Daytona Beach, Florida 32115-2451

Phone (386) 671-8080  
Fax (386) 671-8085

**REQUEST FOR PROPOSALS  
INVITATION**

**NOTICE IS HEREBY GIVEN** that sealed online proposals will be received until June 4, 2020 at 2:00 PM, at which time they will be publicly opened for the following:

**HALIFAX HARBOR MARINA MANAGEMENT SERVICES**

**AWARD OF CONTRACT** subject to the Purchasing Code of the City of Daytona Beach.

**THE RFP MAY BE OBTAINED** on-line at <http://purchasing.codb.us> by clicking on the link to "Public Solicitations" or as a hard copy at the office of the Purchasing Agent City Hall, 301 South Ridgewood Avenue, Room 146, Daytona Beach, FL 32114.

**SCOPE OF WORK:** The City of Daytona Beach is seeking a firm to manage the Halifax Harbor Marina, both the North and South Basins, in accordance with the attached scope of services.

**A NON-MANDATORY PRE-PROPOSAL CONFERENCE** will be held via Goto Webinar, on May 13, 2020 at 10:00AM. Interested Proposers are *urged* to attend by pre-registering at <https://attendee.gotowebinar.com/register/1000660441345964045>. After registering, you will receive a confirmation email containing information about joining the webinar.

**THE CITY RESERVES THE RIGHT** to reject any or all proposals or parts thereof, or to accept the proposal(s) or parts thereof, when considered by it to be in the best interest of the City. Any proposal received after the time and date specified will not be considered. No proposer may withdraw their proposal for a period of sixty (60) days after the date of the opening of proposals. This time period is reserved for the purpose of reviewing proposals and investigating the qualifications of the proposers.

**PROPOSALS SHALL BE ADDRESSED** to the City of Daytona Beach, Purchasing Agent, 301 South Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114, and all proposals shall have the following plainly marked on the outside of the envelope:

PROPOSAL FOR: **HALIFAX HARBOR MARINA MANAGEMENT SERVICES**  
PROPOSAL NO: **20481**  
COMMODITY CODE(S): **95877, 95878, 95883**

**THE CITY OF DAYTONA BEACH  
BY: KIRK ZIMMERMAN, CPPB  
BUYER  
ISSUED: May 4, 2020**

**THE CITY OF DAYTONA BEACH  
REQUEST FOR PROPOSALS  
HALIFAX HARBOR MARINA MANAGEMENT SERVICES  
No. 20481**

**GENERAL CONDITIONS**

**THIS IS NOT A BID.** This is a Request for Proposals for non-professional services issued in accordance with the City of Daytona Beach Code Chapter 30, Article II, Division 3, "Source Selection and Contract Formation". The Request for Proposal specifies the services needed, and lists the criteria upon which the Proposal responses will be evaluated. When received, Proposals will be reviewed and ranked in order, beginning with the one deemed most advantageous to the City. Contract negotiations will commence with the selected Proposer(s). Upon completion of satisfactory negotiations, the contract negotiated that best meets the needs of the City will be recommended for award to the City Commission. A copy of Chapter 30 may be obtained upon request.

**GENERAL CONDITIONS**

1. **INSTRUCTIONS TO PROPOSERS:** To insure consideration of your Proposal, please follow these instructions. The City will only accept on-line Proposals for this solicitation through its Bid Platform. The City's only authorized Bid Platform is Vendor Registry, accessible through the City's website [www.codb.us/841/Purchasing](http://www.codb.us/841/Purchasing) under the link to "Public Solicitation", then by selecting the proper bid and clicking "Submit Bid". No paper copies, faxes, emails, or other forms of on-line submittals will be accepted. If possible, please use only one PDF document as your submittal. Any reference in this document to "sealed bids" is hereby replaced with "sealed on-line Bids". All Proposals not in compliance with the conditions specified herein are subject to rejection.
2. **REQUESTS FOR INTERPRETATIONS.** If the Proposer is in doubt as to the meaning of any of the RFP Documents or other Contract Documents included in this solicitation, the Proposer may submit a written request to the City for an interpretation, care of the Purchasing Agent at [purchasing@codb.us](mailto:purchasing@codb.us). Such requests must be received 10 days prior to Proposal opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation issued by the City in the form of a written addendum will be deemed to be a part of the Proposal Documents.

Questions may also be submitted online through the City's Bid Platform. Prospective bidders may ask questions which will be forwarded to the project manager. Any responses will be posted in the form of an addendum or replied to the public through the online Bid Platform. The bidder is responsible to view the online responses at the web site listed above before submitting their bid.

No oral clarification or interpretation will be binding.

3. **EXECUTION OF PROPOSAL:** The Proposal must contain a manual or electronic signature of an individual or of an authorized representative of the firm making the Proposal, in the space provided on the Proposal Form, if provided as a part of the Proposal package, or on Proposer's own form, if a specific Proposal form is not provided. The Proposer's name shall be inserted on all sheets requiring the Proposer's name. In order to insure uniformity, Proposals must be submitted on the Proposal Form, if provided, and on the attached pages.
4. **PROPOSAL OPENING - LATE PROPOSALS:** Proposals will be opened publicly, the name of the Proposers read aloud and recorded, on the date and time indicated, at the location specified in this Request for Proposals. It is the Proposers' responsibility to make certain that his/her Proposal was submitted online prior to the opening date and time specified. Any Proposal received thereafter will be rejected.
5. **WITHDRAWAL OF PROPOSALS:** Proposals may be amended or withdrawn only by written notice prior to the Proposal opening. Proposal amendments must be submitted in a sealed envelope. Amendments or withdrawals received after the Proposal opening will not be effective, and the original Proposal submitted will be considered.
6. **CONSIDERATION OF PROPOSALS:** Paper, Telephonic, or faxed Proposals will not be considered. The Proposer agrees that his/her Proposal will not be withdrawn within sixty (60) calendar days following opening of the Proposals, and that during such time his Proposal will remain firm and irrevocable. The City reserves the right to reject any or all Proposals, and to waive any technical defects in Proposals.
7. **COOPERATIVE PURCHASING:** All proposers awarded contracts from this RFP 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.
8. **GENERAL REVIEW PROCEDURES:** The Purchasing Code, Chapter 30, Code of the City of Daytona Beach, sets forth the general review procedures for competitive sealed proposals. Under the Purchasing Code, the City Manager is required to evaluate and rank responsive Proposals in accordance with the criteria identified in the RFP. Before submitting a recommendation for final action on this RFP to the City Commission, the City Manager is authorized to "shortlist" and negotiate with one or more of the Proposers who submitted the highest ranked Proposals. As part of these negotiations, the City Manager may request revised Proposals from shortlisted Proposers.

The City Manager has adopted a policy delegating the task of initially ranking responsive Proposals to a Selection Committee. The Selection Committee may require personal interviews with Proposers before submitting its recommendations to the City Manager.

9. **LOCAL PREFERENCE:** Pursuant to the Purchasing Code, preferences may be given in the evaluation of responsive Proposals to Local Vendors. A “Local Vendor” is a vendor 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 Proposals were received for the contract at issue, which generally provides from such permanent place of business the kinds of services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

In order to qualify as a Local Vendor, the Proposer must submit a properly completed Local Vendor affidavit as part of its Proposal. A Proposer who fails to properly complete and sign this affidavit or submit it with the Proposal will not be considered for local preference in this RFP. The City is the ultimate arbiter as to whether the Proposer qualifies as a Local Vendor; and the City may require the Proposer to submit additional documentation verifying that the Proposer qualifies as a Local Vendor.

A Proposer qualifying as a Local Vendor will be given the following Preferences:

- a. At the City’s discretion, the Proposer may be given bonus points of up to 10% of the total available points used to score Proposals for purposes of ranking them. The ranking process is described further in Paragraph 8, above. The exact percentage awarded may be adjusted based on the extent of work to be subcontracted to non-local vendors.
  - b. After the Selection Committee has evaluated and ranked Proposals, if the highest-ranked Local Vendor’s Proposal would not otherwise be among the list of the highest-ranked Proposals submitted to the City Manager (See Paragraph 8 above), the list will be modified to include the highest-ranked Local Vendor’s Proposal. In addition, if the evaluation criteria referenced in Paragraph 8, above, includes price, all of the Proposers on the modified short list will be given the opportunity to submit best and final fee proposals; and final ranking provided by the Selection Committee will be based on the best and final proposals. For purposes herein, the reference to “best and final” will not serve to alter the City Manager’s authority, as referenced in Paragraph 8, above, from requiring a short listed Proposer to submit a revised Proposal.
10. **AWARD:** The award will be made by the City to the firm most qualified and offering the best value to the City, which will be determined by evaluation of Proposals using the evaluation criteria contained in the RFP, and in accordance with

applicable rules and regulations governing the purchase and contract adopted and established by the City, and the State of Florida.

Any contract resulting from this solicitation may, in the alternative, be awarded by the City of Daytona Beach Community Redevelopment Agency (CRA). Therefore, any bids/proposals submitted in response to this solicitation shall be deemed to be offers to the CRA as well as the City. Any final written contract may be with the CRA instead of the City.

11. **NON-COLLUSION**: By submitting a Proposal in response to the request and signing the Anti-Collusion Statement form enclosed, the Proposer represents that, should the Proposal be accepted, the resulting contract(s) would not violate any provisions of federal law or regulations, or any ordinances or regulations established by the City. The Proposer warrants as an integral and essential part of his/her Proposal: (a) that he/she has not participated in nor is he/she obligated or bound by any agreement, arrangement or other understanding with any person, firm or corporation with respect to the allocation of the business afforded by or resulting from the acceptance of his/her Proposal; (b) that his/her Proposal is or is intended to be competitive and free from any collusion with any person, firm or corporation; and (c) that he/she is not a party to nor has participated in nor is he/she obligated or otherwise bound by any agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning Proposals, prices, terms or conditions upon which the contract(s) resulting from this acceptance is to be performed.
12. **PERMITS, ETC.**: All Proposals submitted shall include in the price the cost of any business or professional licenses, permits or fees required by the City and any agency having jurisdiction over the services solicited through this Request for Proposals.
13. **PATENT INFRINGEMENT, ETC.**: By submission of a Proposal the Proposer certifies that the services to be furnished will not infringe any valid patent, copyright, or trademark and the successful Proposer shall, at his/her own expense, defend any and all actions or suits charging such infringement and hold the City harmless in case of any such infringements.
14. **TAXES**: All Proposals shall be exclusive of federal taxes. However, if the Proposer believes that certain other taxes are properly payable by the City, he/she may list such taxes separately in each case directly below the respective item price. Tax exemption certificates will be furnished upon request.
15. **PERFORMANCE**: During the performance of the contract, the Proposer agrees as follows:
  - a. The Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin.

- b. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section.

- 16. **FLORIDA PUBLIC RECORDS LAW:** Sealed proposals received by the City pursuant to the Request for Proposals will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all Proposals will be open for a personal inspection by any person pursuant to Public Records Law.

If the Proposer believes that the Proposal or any portion thereof is permanently exempt from disclosure under the public records laws, the Proposer must state the grounds for this position in CAPITAL LETTERS in a certified letter addressed to the Purchasing Agent and received at least 3 days prior to the Bid Opening. The Proposer will be contacted prior to the opening of the Proposal 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 Proposer may in writing request the return of the sealed Proposal.

- 17. **EVALUATION CRITERIA:** The weighted evaluation criteria >in the Scope of Work will be used to evaluate Proposals and develop a recommendation to the City Manager as described in Section 8, above. Each criterion will be scored between 1 and 5; 1=poor, 2=below average, 3=average, 4=above average, 5=excellent. Scores will be multiplied by the criterion weight for a weighted score; weighted scores will be totaled for the weighted total score.

Weighted Evaluation Criteria

|  |         |
|--|---------|
| Experience and Past Performance of the Firm          | 30      |
| Narrative describing approach to Managing the Marina | 25      |
| Qualifications of Key Personnel                      | 20      |
| Financial capability and stability                   | 15      |
| Revenue Generating Strategies                        | 10      |
| <br>TOTAL<br>Points                                  | <br>100 |

- 18. **REFERENCES:** The contact person(s) listed as a reference shall be someone who has personal knowledge of the contractor's performance during the referenced project. Contact persons must have been informed that they are being used as a reference and that the City may be calling them. More than one person can be listed but all must have knowledge of Management Services. DO NOT list principals or officers who will not be able to answer specific questions regarding the project.

19. **REJECTION OF PROPOSALS:** The City reserves the right to reject any or all Proposals in whole or in part and to award by items, parts of items, or by any aggregate group of items specified. The City also reserves the right to waive technical defect when in its judgment the best interests of the City thereby will be served.
20. **QUALIFYING PROPOSERS:** Prior to awarding of Proposal, the City may require submission by Proposer of complete financial statement and questionnaire describing Proposer's financial ability and experience in performance of similar work.
21. **RULES AND REGULATIONS:** All work performed under this agreement shall be in strict compliance with local, State and Federal laws, rules and regulations. Proposer shall assume all liability for fines and penalties assessed by the authorities for any infractions.
22. **MINORITY AND WOMEN WORK FORCE PARTICIPATION:** The City has an established policy of: 1) promoting Minority and Women-Owned Business Enterprise participation in business contracts and 2) requiring Proposers doing business with the City to use good faith efforts to promote cultural diversity and minority participation in the work force, including managerial positions. Proposers must provide information as part of the Proposal acknowledging its understanding and willingness to comply with the Purchasing Code of The City of Daytona Beach.
23. **NO COSTS:** The City of Daytona Beach bears no responsibility for any costs incurred in the preparation of the Proposal.
24. **DRUG FREE WORKPLACE:** The selected firm must provide the Drug Free Workplace Form in accordance with Florida Statute 287.087, prior to Contract award.
25. **PROHIBITION OF LOBBYING.** Except for negotiations authorized by the City Purchasing Code, the Consultants Competitive Negotiations Act, or other state or federal law, lobbying by the Proposer, or the Proposer's principals, officers, employees, attorneys, or other agents, is strictly prohibited during the Blackout Period. Lobbying in violation of this section may cause the proposal to be rejected.

"Lobbying" means influencing or attempting to influence action or non-action in connection with this RFP or the proposal, through direct or indirect oral or written communication with the Mayor, any member of the City Commission, the City Manager, or any other City employee. The following activities are not within the definition of "lobbying," and are permitted: requests for clarification submitted to the Purchasing Agent in accordance with this RFP, discussions with the Selection Committee as part of the selection process, the submission of additional information in response to a request by the City, and addressing the City

Commission during the City Commission meeting at which the contract is awarded or all Proposals are rejected.

The Blackout Period begins on the date that this RFP is issued and ends when the contract is awarded or all Proposals are rejected.

26. **SELECTION PROCESS:**

For the purpose of selecting the most qualified firm, the City will use a competitive selection process as set forth in pertinent City and State procurement requirements. The procedure will involve the following steps:

- a. The City will advertise and mail notice of formal Requests for Proposals to interested Proposers.
- b. The City's Selection Committee will review, rank, and shortlist all Proposals received by the established deadline for submission. Oral presentations by the short-listed Proposers to clarify their Proposals may be required. These presentations will serve to explain implementation techniques integral to their written Proposal. Subsequent to the receipt of Proposals, the City may schedule a time for each requested oral presentation at a place convenient to the City.
- c. The City's Selection Committee will then rank each Proposal and prepare a recommendation for approval by the City Manager. Upon receipt of the City Manager's authorization, the City's Project Manager shall negotiate a contract with the highest ranked Proposer(s) approved by the City Manager. Should the Project Manager be unable to negotiate a satisfactory contract with the any of the shortlisted Proposers, the City Manager, or designee, shall terminate such negotiations with any or all of the shortlisted Proposers and begin negotiations with remaining Proposers based on ranking, until negotiations are successful or this RFP is cancelled.
- d. **The City Commission has the sole authority to bind the City to the terms and conditions of a contract that has been approved in a public meeting of the City Commission. The City Commission reserves the right to modify or reject any contract for the acquisition of goods and/or services submitted to it for consideration.**



## **SCOPE OF SERVICES**

### **1. OPERATOR'S DUTIES**

The Management Services Agreement establishes the Operator as the manager of the City of Daytona Beach Halifax Harbor Marina, and subject to the Agreement, any person dealing with the Operator shall have the right to rely fully on its powers and authority to bind the premises with regard to the use and occupancy thereof, excepting, however, the Operator shall not have the authority to encumber real or personal property of The City except as provided in this agreement.

The operator shall be an independent operator, and shall perform the following duties:

#### **A. General Management Services**

The operator as management agent for the City, shall operate and manage the facility during the term of this Agreement. The operator shall manage the premises for the purpose of operating a public marina and recreation facility offering dockage and other marina related services for the use of and by the general public. The operator shall operate the facility as a first class facility efficiently and with economy. These services shall include:

1. Collecting, recording, and depositing all revenue receipts.
2. Vouching and transmitting all harbor related expenses authorized by the approved budget to the City for payment. All such payments must be fully documented with original invoices.
3. Executing leases on behalf of the City for docking and mooring of boats.
4. Operation of the recreational walkways to which the public must be allowed full and free access, except where boats are docked, and operation of designated fishing areas, marine exhibits, and marine oriented attractions.
5. Sale of bait, tackle, ice and other sundries incidental to the boating public's needs or executing leases on behalf of the City for the ships store, convenience store and bait shop.
6. Maintaining a list of appropriately insured boat and marine equipment maintenance and repair technicians for referral on a non-exclusive basis, general minor repairs and servicing of boats while docked or moored in the water only. No boats or craft shall be removed from the water at the facility for repairs or maintenance on the premises.
7. TV, telephone, electricity, WiFi, and security.
8. Information Center and telephone, mail and messages services.
9. Sale of fuel.
10. Shower, restroom, and laundry facilities for the use of persons docking.
11. Other profit centers to be approved by the City Manager.
12. Attending all meetings and functions sponsored by the Halifax Harbor Marina Neighborhood Watch Group.
13. Publishing a monthly newsletter.
14. Continuing the Clean Vessels & Clean Marina Programs.

## **B. Rates and Fees**

All rates and fees for operating revenues shall be set by the City Manager; however, consideration shall be provided to recommendations from the Operator. Further, the Operator will perform a survey and analysis of comparable marinas' rates and fees on an annual basis for reference when developing the annual operating budget.

## **C. Rules and Regulations**

The Operator will provide rules and regulations subject to the approval of the City Manager or City Commission, as appropriate, for the conduct of vessel owners and others using the managed property. Such rules shall be furnished to each and every user, tenant, or concessionaire and shall be prominently displayed in the Marina's office. Approval of such rules and regulations shall be obtained from the City Manager or City Commission, which approval shall not be unreasonably withheld. Additionally, the Operator will develop policies with respect to the installation of new features and profit centers for approval by the City. The rules and policies in existence at the time of commencement of this Agreement shall continue in effect until modified as provided in this paragraph.

## **D. Advertising and Marketing**

The City shall approve funds in the budget for a marketing/advertising program in order to stimulate the general business of the Marina. The Operator will undertake an aggressive program to inform the public of the availability of services of the marina, and the City will use its best efforts to assist the Operator in promoting the public use and enhancement of the Marina.

The Operator will develop policies with respect to advertising and publicity of the marina for the purpose of creating the greatest possible net income.

The Operator will work with area merchants and businesses to develop an integrated program of auxiliary services, such as hotel accommodations, car rentals and other services for marina uses.

## **E. Fiscal Procedures**

The City will furnish the Operator with a copy of the City's accounting and purchasing procedures that shall be adhered to by the Operator.

1. Establishing and operating the budget The Operator shall recommend an annual operating budget and a capital improvement budget for the Marina in accordance with the procedures and schedule established by the City. The line item revenue and expense operating budget should include projections of both revenues and expenses with a narrative regarding recommended rates for all fees and a discussion of any new or expanded program initiative. The budget is subject to approval by the City Commission. Supplemental budget adjustments may be

authorized by the City Commission. The City Manager is authorized to transfer any unencumbered balance of a line item expense to another line item upon request of the Operator.

2. All consideration that the Operator receives or may be entitled to by virtue of this Agreement whether it be cash, checks, credit card, discounts, promotional incentives, or any other type of consideration, shall be transmitted to and recorded on behalf of the City. All consideration received by the Operator shall be immediately recorded on an acceptable recording device by date, type of consideration or revenue in category, and amount. This recording device shall have the capability to produce an audit tape of all transactions as needed. All cash, checks, and credit card type transactions shall be recorded on a daily cash report and these items then deposited daily to the City's bank account no later than 2:00 P.M. each banking business day. Also, a copy of the daily cash report and bank deposit slip shall be presented to the City Hall cashier before the close of business each day. The term "consideration" shall not be construed to include the consideration paid the Operator by the City under this Agreement or any gratuities paid by Marina patrons to the employees of the Operator.

3. The Operator shall enter Purchase Orders for approval as outlined in the Purchasing Manual before ordering materials, supplies or services. This includes adherence to the bidding of supplies, goods, and services over the \$25,000 authorized limits. The Purchasing Division will perform the purchasing function and will issue appropriate City Purchase Orders to vendors.

4. The Operator shall transmit to the City's Finance Department requests and authorizations for payment to vendors in accordance with the City's Accounting and purchasing procedures. The City will pay all Marina expenses as authorized by the approved budget.

5. The City will provide the Operator a monthly revenue and expense report within fifteen (15) days of the end of each month.

6. The City will reimburse the Operator for costs of insurance which are approved by the City.

#### **F. Staffing**

The Operator shall hire, discipline, and discharge (as appropriate) all of its employees to fulfill this agreement. All employees so employed shall be employees of the Operator and NOT of the City. The Operator shall not use contract workers unless such workers are engaged through an acceptable employment organization. The Operator shall establish and implement an acceptable hiring plan which does not discriminate based on race, creed, color, sex, age, or national origin. The Operator is responsible for establishing the compensation rates and benefits of all its employees in conjunction with the approved budget. The

Operator is responsible for directly paying its employees each established pay period and for withholding any appropriate government prescribed deductions and directly remitting such deductions in a timely manner to the appropriate government agency.

#### **G. Maintenance**

The City will provide adequate funds in the operating budget for maintenance. During the term hereof, the Operator shall operate the premises in good condition to the satisfaction of the City Manager. The standard used shall be consistent with the agreement and the operation of a first class Marina. The Operator shall provide normal and routine maintenance of the facility, designed to keep the managed premises in a good state of repair, free from hazardous conditions and deterioration.

#### **H. Permits and Licenses**

The Operator shall ensure that all permits and licenses necessary for the operation of concessions are obtained. The City shall obtain all permits necessary for the development and continued operation of the Marina.

#### **I. Conformity to Law**

The Operator covenants to comply with all laws, ordinances, regulations and orders of Federal, State, County, and municipal authorities pertaining to the management of the premises and operations thereon, including employment laws.

The Operator further covenants and agrees that it will not discriminate as to race, color, creed, sex, age or national origin in the use of managed premises or in the employment of its personnel.

#### **J. Custodial Services**

The Operator shall oversee the provision of all custodial and janitorial services required to maintain the managed premises in a clean, sanitary and presentable condition during the time which the Operator, by virtue of this Agreement, manages the same premises. The cost of maintenance supplies and personnel shall be included in the operating budget.

#### **K. Security Guard**

The City has awarded a contract for uniformed security guard service to Credible Security, Daytona Beach, Florida.

## **2. OWNERSHIP OF IMPROVEMENT**

All improvements, fixtures, equipment and supplies constructed or installed or located at the facility or purchased with City funds shall be the property of the City. Upon expiration or termination of this Agreement, title to the property, all permanent improvements, fixtures and equipment purchased with City funds shall be peacefully surrendered and delivered to the City.

## **3. DAMAGE OR LOSS TO THE OPERATOR'S PROPERTY**

The Operator assumes all risk of damage or loss to its property for any cause whatsoever, which shall include, but not be restricted to, any damage or loss that may occur to its merchandise, goods, or equipment, covered under this Agreement, if lost, damaged or destroyed by fire, theft, rain, water or leaking of any pipes or wastewater in or about said managed premises, or from hurricane or any act of God, or any act of negligence of any user of the facilities, or occupants of the managed premises, or any person whomsoever.

## **4. DESTRUCTION**

In the event the managed premises are destroyed or so damaged or injured by fire, hurricane, decay or any other casualty, during the life of this Agreement, whereby the managed premises shall be rendered untenable, the City shall render said premises tenable by repairs within ninety (90) days. During any period of reconstruction the Marina will be operated under an interim budget, proposed by the Operator and adopted by the City that reflects the most probable forecast of income and expenses. Any consideration made by the Operator to the City shall be reduced proportionate to the time required to render the repairs. In the event the said premises are substantially destroyed or so damaged or injured by fire, hurricane, decay, or another casualty that the said premises cannot be rendered tenable or the City elects not to repair or replace within a ninety (90) day period of time so set forth, or such additional period of time as agreed to by the Operator, then this Agreement shall be terminated at the option of the City and the consideration paid by the Operator to the City shall be payable only to the date that said premises were rendered untenable and then only to the extent specified herein above, and any insurance proceeds paid to either party as a consequence of the destruction of the property shall be shared by the City and the Operator in proportion to their respective interest.

## **5. CITY'S RIGHT TO EXAMINE PREMISES**

The Operator shall make available for inspection by the City Manager or his designee all areas of the property under the Operator's management, at any time, for any purpose the City Manager deems necessary, or incidental to or connected with the performance of the City's duties and obligations hereunder. An employee

of the Operator shall accompany the City Manager or his designee on all inspections of the premises.

## **6. DEFAULT**

If the Operator shall neglect or fail to perform any of the terms, provisions, conditions and covenants herein contained, which may or may not materially and adversely affect the operation of the Marina, for a period of thirty (30) days after the receipt by the Operator of written notice from the City Manager or his designee of such neglect or failure, the operator shall be considered to be in default. The City shall notify the Operator, in writing, that the Operator is in default. If the condition of default shall continue without cure for an additional thirty (30) days, the City may, at its option, and without further notice or demand to the Operator, may enter into possession of the managed premises and all improvements and property thereon and may terminate this Agreement.

If the Operator shall neglect or fail to perform any of the terms, provisions conditions, and covenants herein contained which materially adversely affect the operation of the Marina, the Operator shall be in default and upon seven (7) days written notice from the City Manager, this Agreement shall be terminated. The City shall assume management of the Marina, and the Operator shall immediately surrender possession of all City property in its custody and vacate the Marina.

## **7. CONSTRUCTION**

The Operator shall abide an conform to the provisions of the City's Purchasing system an procedures with respect to submission of Purchase Orders and requests for payments incidental to its responsibilities for managing the marina facility. Subject to the limitations and authority imposed by the Purchasing Code, and City policy, the Operator shall make no addition, alteration, or adjustment to the managed premises, nor shall Operator apply for construction permits of any kind without first having obtained the written consent of the City Manager, which shall not be unreasonably withheld. All requests shall be in writing and shall include plans and specifications pertaining thereto. All permits must be received from the appropriate governmental agencies prior to undertaking any repairs, alterations, additions or improvements. All permanent alterations, improvements or repairs made or installed by the Operator shall be the property of the City.

## **8. CONFLICT OF INTEREST**

No stockholders, directors, partner, employees of the Operator, or members of their families, shall have any interest in any business which supplies the Operator with goods or services in connection with the dockage without advice to and consent of the City Manager, but said individuals may have an interest in marine exhibits located at the managed premises.

## **9. ATTORNEY'S FEES AND COST**

In the event that it is deemed necessary for either party to file a lawsuit in the appropriate court of law in order to enforce any of the terms or provisions of this Agreement, then the prevailing party shall be entitled to reasonable attorneys' fees and costs, including those incurred in appeals.

## **10. RIGHT TO AUDIT RECORDS**

The Operator shall maintain books and records in sufficient detail to meet generally acceptable accounting practices. Said books and records shall be accessible to the City at reasonable times, on three (3) days notice to the Operator. The Operator grants to the City the right and authority to audit all records, documents and books pertaining to the management operations at the marina/harbor. The City reserves the right to perform unannounced cash audits.

## **11. HURRICANES AND EMERGENCIES**

The City shall, during any emergency such as hurricane, flood, fire or any type of disaster, cooperate with the Operator for the security of the managed premises. The City shall use its best efforts during an emergency to safeguard the premises.

## **12. INVENTORY**

Prior to the beginning of the contract period, a representative of both the City and the Operator will jointly perform a physical inventory count and observation of all fixtures, furnishings, furniture, and equipment, in or upon the managed premises and said inventory will be attached hereto and made a part hereof within fourteen (14) days of the execution of the Agreement. The Operator agrees that the fixtures, furnishings and equipment are in the condition as stated in the inventory; that the Operator personally inspected and assisted in the taking of said inventory; that the Operator will maintain the fixtures, furnishings, furniture and equipment, if any, during the term of this Agreement, and that said property shall be deemed in its sole custody and care.

At least once annually during the contract period the City will provide the Operator with an amended listing of fixed assets to verify those assets currently in place taking into account deletions and additions. The City will provide the Operator with fixed asset identification tags to be affixed to such assets.

At the termination of this Agreement, a representative of the City and the Operator will jointly perform a physical inventory count and observation of all fixtures, furnishings, furniture and equipment.

In the event any of the aforementioned items are lost, stolen or damaged, through the culpable negligence of the Operator, they shall be replaced or repaired at the cost and expense of the Operator.

### **13. REPRESENTATION BY THE CITY**

The City warrants and represents that it has full power and authority to enter into this Management Services Agreement under the Constitution and Laws of the State of Florida and Ordinances and resolutions of the City of Daytona Beach, and that all conditions and things required by the Constitution and Laws of the State of Florida, Volusia County and the City of Daytona Beach to happen, exist and be performed precedent to the signing of the Management Services Agreement have happened, exist and have been performed as so required.



## ANTI-COLLUSION STATEMENT

By signing this form, the Proposer agrees that this Proposal is made without any other understanding, agreement, or connection with any person, corporation, or firm submitting a Proposal for the same purpose and that the Proposal is in all respects fair and without collusion or fraud.

Sign in ink in the space provided below. Unsigned Proposals will be considered incomplete, and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED PROPSEER THAT THE SIGNING AND DELIVERY OF THE PROPSAL REPRESENTS THE PROPOSER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FORGOING TERMS AND CONDITIONS AND SCOPE OF SERVICES, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE PARTIES.

NAME OF FIRM: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_  
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

NAME TYPED: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

## **DRUG FREE WORKPLACE FORM**

The undersigned, in accordance with the Florida Statute 287.087 hereby certifies that  
\_\_\_\_\_ does:

(Proposer)

1. Publish a statement notifying 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 violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, any Available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under Proposal a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a 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 convicted.
6. Make a good faith effort to continue to maintain a drug free workplace through implementation of Paragraph 1, through Paragraph 5.

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

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

\_\_\_\_\_  
Signature & Title

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

1. This sworn statement is submitted to \_\_\_\_\_  
(print name of the public entity)  
by \_\_\_\_\_  
(print individual's name and title)  
for \_\_\_\_\_  
(print name of entity submitting sworn statement)  
whose business address is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_  
  
(If the entity has no FEIN, insert the Social Security Number of the individual signing this sworn statement above: \_\_\_\_\_)
2. I understand that a "public entity crime" as defined in Paragraph 287.133(l)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(l)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(l)(a), Florida Statutes means:
  - (a) A predecessor or successor of a person convicted of a public entity crime, or

- (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.*)

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.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Sworn Statement Pursuant To Section 287.133(3)(A), Florida Statutes, On Public Entity Crimes and that the facts stated in it are true.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## 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.

### VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Local Vendor Affidavit and that the facts stated in it are true.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**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.**

## GENERAL SERVICES TERM CONTRACT CONTRACT NO. 20481

**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:

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

**Section 1. Scope of Services.** CONTRACTOR will Halifax Harbor Marina Management Services to the CITY from time to time at the request of the CITY during the Term of this Contract.

**Exhibit A**, attached hereto and incorporated herein by reference, provides a detailed description of the range of services that may be provided under this Contract.

**Section 2. Services Must Be Authorized in Writing.** This Contract, in and of itself, does not require the CONTRACTOR to perform any services or obligate the CITY to pay for any services rendered. No services will be provided under this Contract, and no payment obligation will arise for performance of services, except when specifically authorized by work authorization issued in accordance with the CITY's procurement policies. A work authorization may consist of a contract document signed by both the CITY and CONTRACTOR; or it may consist of CONTRACTOR's written quotation/proposal, identifying the work to be performed and the unit prices for such work, and the CITY's written acceptance of such quotation or proposal. No work authorization may alter the terms and conditions of this Contract. In case of a conflict with a work authorization this Contract will govern. The work authorization may provide more detailed parameters for the services to be provided, such as deliverables, deadlines, etc, consistent with the provisions of this Contract.

No claim for services furnished by the CONTRACTOR not specifically provided for herein will be honored by the CITY.

If CONTRACTOR is providing services under a work authorization at the time that this Contract expires or terminates for any reason other than CONTRACTOR's material breach, CONTRACTOR will continue to provide such services unless and until the CITY provides CONTRACTOR a notice suspending or terminating such services. If CONTRACTOR is providing services under an open work authorization at the time that the CITY terminates this Contract due to CONTRACTOR's material breach, CONTRACTOR will immediately cease performing all services unless the notice of termination specifically provides otherwise.

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

(a) **Fee.** Each work authorization will set forth the Fee to be paid to CONTRACTOR. The Fee will be established as either a not-to-exceed or fixed fee. In either instance the work authorization will include sufficient documentation to describe the basis on which the fee has been calculated.

(1) Except as provided below, the Fee for a work authorization will be based on the Fee Schedule. The initial Fee Schedule is attached hereto and incorporated herein as **Exhibit B**. The parties may agree to amend the then current Fee Schedule only through formal amendment to this Contract.

(2) A fixed fee will be construed to be based on the Fee Schedule only where documentation is included that sets forth a good-faith estimate of the time required by CONTRACTOR to complete the work, at commercially reasonable hourly rates; provided, however, that in such instances neither CONTRACTOR's obligation to perform the work nor the fixed Fee will be altered merely based on the need to spend more or less time than shown on the estimate to complete the work.

(b) **Reimbursement of Expenses.** In addition to the Fee, the work authorization may provide for reimbursement of certain types of expenditures that CONTRACTOR may incur in providing the service required. An expense will be reimbursed only if specifically identified as reimbursable by the work authorization. In addition:

(1) An expense will be subject to CITY reimbursement only when the CITY determines that the expense is reasonably necessary for CONTRACTOR's performance of the work. If the work authorization does not specifically identify when such expenses are necessary, CONTRACTOR may request the CITY's project representative to approve the expense, in writing, in advance of incurring the expense; and the project representative's written approval will be binding on the CITY as to the determination of such necessity.

(2) Where the expense subject to reimbursement is a cost or expense for goods or services provided to or on behalf of CONTRACTOR by a third party, reimbursement will be limited to the actual costs billed by the third party, without markup by CONTRACTOR.

(3) Where reimbursement is specifically authorized for travel, the following limitations apply:

i. As to use of vehicles, per diem rates for use of owned vehicles will be in accordance with then-current IRS business related mileage rate and in such cases; rental of vehicles will be limited to economy or –mid-size sedans and will require prior written approval; and reimbursement for vehicular travel will only be made for travel in excess of 50 miles round trip in any event.

ii. Air fare must be at the coach rate unless the CITY approves otherwise in advance.

iii. As to meals, reimbursement will be limited the lower of the actual cost incurred of the meal or the following amounts unless approved in advance by the CITY:

Breakfast \$ 6.00 includes tip & tax  
Lunch \$ 9.00 includes tip & tax  
Dinner \$15.00 includes tip & tax

(4) Subcontractor expenses will be subject to the same limitations as those that apply to CONTRACTOR.

In all instances, the work authorization will specifically identify the types of expenses that may be reimbursed, and will specifically state an upset limit, either by category of expense or by total; and if no limit is stated, the upset limit for all permitted reimbursables will not exceed 5% of the fixed or not-to-exceed Fee stated in the work authorization.

In all instances any additional limitations set forth in the **Exhibits** will apply.

(c) **Limitation on Compensation.** No additional compensation will be due CONTRACTOR for any reason.

**Section 4. Billing and Payment Procedure.** In addition to requirements for payment established by applicable federal, state, or local law including the City Code, or the **Exhibits**, payment terms and conditions 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 work authorization. CONTRACTOR may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the date of the work authorization.



(b) For work authorizations providing for fixed fees: if the work authorization specifically provides for payment to be made in stages based upon completion of phases, tasks, or other discrete increment of the service to be provided, CONTRACTOR will invoice the CITY as these increments of service are completed, and in any event no more frequently than monthly. If the work authorization so provides, or is silent as to the method for payment, payments will be made on the basis of the percentage of work completed and accepted.

(c) For work authorizations providing for Fees based on the hours worked, payment will be made based on the hours worked and billed during the monthly billing interval.

(d) 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.

(e) 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 will 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 be responsible for the performance of CONTRACTOR's sub-contractors.

**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; or, if this Contract is terminated prior to completion of service, immediately upon termination.

**Section 8. Public Records.** Each work authorization will be deemed to incorporate the following provision in substantially final form regarding 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 the work

required by a work authorization, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of the work required by a work authorization, 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 provided 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<br>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.

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

The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is **5 years**, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to **1** Term of **5 years** each, by providing CONTRACTOR written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONTRACTOR.

#### **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) Except as provided in Section 10(a)(3), 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.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if CONTRACTOR or any of CONTRACTOR'S personnel, in connection with the services or rights provided

herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(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 Section 10(b) 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.

If CONTRACTOR is providing services under an open work authorization at the time that this Contract expires or terminates for any reason other than CONTRACTOR's material breach, CONTRACTOR will continue to provide such services unless and until the CITY provides CONTRACTOR a notice suspending or terminating such services.

**Section 11. Suspension of Services.** The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

**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 used by CONTRACTOR in the performance of this Contract.

**Section 13. Insurance.** 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. The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or sub-contractor providing such 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 \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

(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 to replace the canceled policy at CONTRACTOR's expense if 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 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. Bonds.** *[Insert language if bonds are to be required and are not adequately addressed in the bid/rfp documents; otherwise replace title with "Reserved."]*

**Section 15. 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, *[delete the following yellow-highlighted clause if no fax is provided]* *transmitted to a receiving fax machine 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:  
Michael Stallworth  
Business Enterprise Manager  
City of Daytona Beach  
125 Basin Street, #252  
Daytona Beach, FL 32114  
Fax: 386-671-8015

To CONTRACTOR:  
Contact: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/ST/Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_

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.

The person identified for receipt of notices to the CITY pursuant to this Section will also serve as the CITY's project representative.

**Section 16. Personnel.** *[Delete the following sentence if non-applicable]* In order to induce the CITY into entering this Contract, CONTRACTOR represents that *[insert name and title]* will generally perform or directly supervise the tasks assigned to CONTRACTOR herein, and that CONTRACTOR will not replace *[insert name]* without the CITY's prior written approval. 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 17. CITY's Responsibilities.** The CITY will 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 18. 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 19. 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 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.

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 20. 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 will 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 will 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 the he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(n) **Incorporation of RFP and Proposal.** The CITY's Request for Proposals 20481, 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 with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the RFP and Proposal, the RFP 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.

(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.

**Section >. [insert any other conditions if applicable or if none, delete. Do not insert clauses here that are in Exhibits.]**

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

**THE CITY**

**CONTRACTOR**

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

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

**> [insert Mayor or City Manager as applicable]**

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

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

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

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

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

Letitia LaMagna, City Clerk

Approved as to legal form:

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

Robert Jagger, City Attorney



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

## **Exhibit B: Fee Exhibit**

*Composite Exhibit C is not attached. It will be kept on file with the Purchasing Agent, and will be made available upon request made to the City Clerk.*