

Approved by Council  
06/12/2018 Item V.2

Term: 06/22/18 - 06/21/21  
1st Renewal Option 6/22/21 - 6/21/22  
2nd Renewal Option 6/22/22 - 6/21/23

**CONTINUING SERVICES AGREEMENT  
FOR MARINE CONSTRUCTION SERVICES AGREEMENT**

**THIS CONTINUING SERVICES AGREEMENT** ("Agreement") is made and entered into this 22<sup>nd</sup> day of June 2018, by and between the **City of Cocoa**, a Florida municipal corporation ("City"), located at 65 Stone Street, Cocoa, Florida 32922, and **C&D Construction, Inc.**, a Florida profit corporation ("Contractor"), whose principal address 395 S. Range Road, Cocoa, Florida 32926.

**WITNESSETH:**

**WHEREAS**, City desires to obtain specialized marine construction services and related services on facilities and property owned or operated by the City, from time to time, on a project or task based basis subject to deadlines mutually agreed to by the parties; and

**WHEREAS**, the City issued its Request for Qualifications, **RFQ #Q-18-15-COC** on April 23, 2018, to solicit submissions of qualified respondents for the City's **desired** marine construction services; and

**WHEREAS**, Contractor participated in the selection and negotiation process; and

**WHEREAS**, Contractor is willing to provide such marine construction services to the City under the terms and conditions stated herein; and

**WHEREAS**, the City is willing to place Contractor on its list of pre-approved marine construction contractors for the potential of providing marine construction services to the City in the future; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

**1.0 TERM AND DEFINITIONS**

**1.1** Unless sooner terminated by either Party pursuant to the terms and conditions herein, this Agreement shall terminate on the third (3rd) anniversary of the Effective Date. The Parties shall have the option to extend the term of this Agreement for two (2) additional one (1) year terms. Any such extension shall only be by written amendment to this Agreement executed by both parties hereto.

**1.2** The terms and conditions of any Task Order, as described in Section 2.0 hereof, shall be as set forth in such Task Order. Any Task in effect at the termination of this Agreement shall remain in effect until completion of said Task Order, and all of the terms and conditions of this Agreement shall survive until completion of all Task Orders.

**1.3 Definitions.** The following words and phrases used in this Agreement shall have the following meaning ascribed to them unless the context clearly indicates otherwise:

a. "Agreement" or "Contract" shall be used interchangeably and shall refer to this Continuing Services Agreement, as may be amended from time to time, which shall constitute authorization for the Contractor to provide the marine construction services approved by Task Order by the City and is also sometimes referred to herein to include all Task Orders approved hereunder.

b. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not go into effect until said date.

c. "Contractor" shall mean C&D Construction, Inc., a Florida Profit Corporation, and its principals, employees, resident project representatives (and assistants).

d. "Public Record" shall have the meaning given in Chapter 119, Florida Statutes.

e. "Reimbursable Expenses" shall mean the actual expenses incurred by Contractor or Contractor's independent contractors and subcontractors which are directly related to travel and subsistence at the rates, and under the requirements of, Section 112.061, Florida Statutes, or any other actual and direct expenses the City agrees to reimburse by Task Order.

f. "Work" or "Services" shall be used interchangeably and shall include the performance of the work agreed to by the parties in a Task Order.

g. "Task Order" shall mean a written document approved by the parties pursuant to the procedure outlined in Section 2.0 of this Agreement, and any amendments thereto approved pursuant to the procedures outlined in Section 3.0 herein, which sets forth the Work to be performed by Contractor under this Agreement, and shall include, without the necessity of a cross-reference, the terms and conditions of this Agreement.

## **2.0 DESCRIPTION OF SERVICES**

**2.1** The City shall make request of Contractor to perform marine construction services on a "task" basis. The City will communicate with Contractor, verbally or in writing, a general description of the task to be performed. If a site visit by the Contractor is needed to generate the scope of document, the Contractor shall request approval prior to visiting the site. The Contractor will generate a detailed Scope of Work document, prepare a Schedule, add a **Not-to-Exceed-Budget or Lump Sum Fee to accomplish the task**, and send the thus developed "Task Proposal" to the City. **The detailed cost breakdown of the Lump Sum Fee shall consist of a list of major tasks and sub-tasks as well as a breakdown as to the anticipated hours for all work to be performed. The Task Proposal shall include a detailed breakdown of hourly rates and fees for all Contractor work. The Task Proposal shall include names and dollar value of work provided by sub-contractors.** The City reserves the right, at its discretion, to consider the Task Proposal as part of a formal or

informal competitive bid process before approving or disapproving any Task Proposal. The detailed cost breakdown shall include a line item for Reimbursable Expenses and the list of the expenses proposed to be eligible for reimbursement.

The City will review the Task Proposal, along with any other task proposals submitted to the City for the proposed by other contractors, and if the description, cost and other details of the Task Proposal are deemed by the City to be in the City's best interests, the parties will enter into a mutually agreeable written "Task Order." The Scope of Services generally to be provided by the Contractor through a Task Order may include a variety of specialized marine services. Services to be provided will include, but are not limited to, the services described in the Scope of Services in the attached Exhibit "A." The Contractor shall appoint one of its employees as the key contact for the project and the related Task Proposal.

The City will issue a notice to proceed to the Contractor in the form of a letter and an executed City purchase order. Upon receipt of the signed Task Order and the written notice to proceed from the City, the Contractor shall perform the services set forth in the Task Order.

2.2 The City reserves the right, at its discretion, to perform any services related to this Agreement or to retain the services of other marine construction services firms to provide professional marine construction services. The City does not guarantee that work will be assigned to the Contractor under this Agreement. The Contractor and other selected marine construction services providers shall be notified of and compete for work tasks associated with maintenance activities as well as for construction of elements of the City's future Riverfront Master Plan.

2.3 Individual construction projects under this Agreement shall not exceed \$2 Million.

### 3.0 CHANGES IN THE SCOPE OF WORK

3.1 The City may make changes in the Services at any time by giving written notice to Contractor. If such changes increase (additional services) or decrease or eliminate any amount of Work, City and Contractor will negotiate any change in total cost or schedule modifications. If the City and the Contractor approve any change, the Task Order will be modified in writing to reflect the changes; and Contractor shall be compensated for said services in accordance with the terms of Section 5.0 herein. All change orders shall be authorized in writing by City's and Contractor's designated representative.

3.2 All of City's said Task Orders and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

### 4.0 SCHEDULE

4.1 Contractor shall perform services in conformance with the mutually agreed schedule set forth in the negotiated Task Order. Contractor shall complete all of said services in a timely manner and will keep City apprised of the status of work on at least a weekly basis or as otherwise reasonably requested by the City. Should Contractor fall behind the agreed upon

schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

**4.2** No extension for completion of services shall be granted to Contractor without City's prior written consent, except as provided in Sections 3.1 and 19.1 herein.

**4.3** Any cost caused by defective or ill-timed services shall be borne by the party responsible therefore.

## **5.0 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF CONTRACTOR**

**5.1 General Services.** For basic and additional Services performed by Contractor's principals, employees, and resident project representatives (and assistants) pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Contractor an amount equal to that agreed upon by the parties for a particular Task Order. However, payment terms must be consistent with the terms and conditions in this Agreement. To the extent that the payment terms in any Task Order conflict with the payment terms set forth in this Agreement, the conflicting provisions of this Agreement shall prevail.

**5.2 Witness Services.** For witness or expert services rendered by Contractor's principals, employees, resident project representatives (and assistants), and independent professional associates and consultants on behalf of the City in any litigation, arbitration, or other legal or interested administrative proceeding in which the City is a named interested party, City agrees to pay the Contractor or independent professional associate or consultant, which is used as a witness or expert, an amount equal to that agreed upon by the party for a particular Task Order.

**5.3 Reimbursable Expenses.** In addition to payments provided in paragraphs 5.1 and 5.2 above, City agrees to pay Contractor the actual cost of all Reimbursable Expenses incurred in connection with any Task Order.

**5.4 Miscellaneous.** Under no circumstances shall actual or direct costs under this Agreement include costs associated with inefficiency, offsite or home office overhead, loss of productivity, consequential damages, legal or consulting costs, or costs associated with delays caused in whole or in part by the Contractor.

**5.5 Additional fees not allowable.** The Parties agree that the Services required are adequately described herein and shall be adequately described in all Task Orders. This Agreement includes, and all Task Orders must include, the entire effort required of the Contractor to provide the Services described. Thus, no additional fees shall be allowed for any additional services performed for any reasons whatsoever except those directly attributable to the City's errors or omissions. No out-of-scope Services or expenses shall be provided in the absence of prior, written authorization in the form of a written supplemental agreement and issuance of an appropriate amendment to the Agreement. Additionally, the City shall not pay a retainer or similar fee.

**5.6 Local Government Prompt Payment Act.** The City shall make payments due

and payable in accordance with the Local Government Prompt Payment Act, Section 218.70 et seq., Florida Statutes. The City reserves the right, with justification, to partially pay any invoice submitted by the Contractor when requested to do so by the using City department.

**5.7 Errors and Deficiencies.** Contractor shall not invoice the City or seek any compensation from the City to correct or revise any errors or deficiencies in Contractor's services provided under this Agreement.

**5.8 Payment Offsets.** To the extent that Contractor owes the City any money under this or any other Agreement with the City, the City shall have the right to withhold payment and otherwise back charge the Contractor for any money owed to the City by Contractor.

**5.9 Payment not Waiver.** The City's payment of any invoice under this Agreement shall not be construed or operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement and Contractor shall remain liable to the City in accordance with applicable law for all damages to the City caused by Contractor's performance of any services provided under this Agreement.

**5.10 Delay Remedy.** The risk of any monetary damages caused by any delays in performing the Services under this Agreement and any Task Order are accepted and assumed entirely by the Contractor, and in no event shall any claim relating thereto for an increase in compensation be made or recognized. Contractor shall not make any claim nor seek any damages of any kind against the City for any delays, impacts, disruption or interruption caused by any delay. Contractor's remedy for a delay shall be an equitable extension of time to perform the Services for each day of such delay that impacts the critical path of the schedule established under this Agreement or specific Task Order.

**5.11 Acceptance of Payment.** Acceptance of final payment by the Contractor for a specific Task Order shall constitute a release of all claims for payment which the Contractor may have against the City for that Task Order unless such claims are specifically reserved in writing and transmitted to the City by the Contractor prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the City may have against the Contractor or to any remedies the City may pursue with respect to such claims.

**5.12 Payment Adjustments.** It is agreed that payment by the City of any billing will not constitute agreement as to the appropriateness of any item and that at the time of any final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the Contractor, the Contractor agrees to refund such overpayment to the City within ninety (90) days of notice of any such overpayment. Such refund shall not constitute a waiver by the Contractor for any claims relating to the validity of a finding by the City of overpayment.

**5.13 Partial Payments.** Payment made to the Contractor shall not constitute acceptance of the work or any portion thereof which is not in accordance with this Agreement. The City retains the right to pay only that percentage of the total contract amount that equals the



same percentage that work completed bears to the total amount of work required to be performed under this Agreement. If the City objects to all or any portion of any invoice, it shall notify the Contractor of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

**5.14 Invoices to include City Purchase Order Number.** All invoices shall clearly indicate the city purchase order number.

**5.15 Invoices to be sent to Accounts Payable.** All invoices shall be directed to the Accounts Payable Section, City of Cocoa, 65 Stone St., Cocoa, FL 32922, with a copy directed to the City department using the services.

## **6.0 RIGHT TO INSPECTION**

**6.1** City or its affiliates shall at all times have the right to review or observe the Services performed by Contractor.

**6.2** No inspection, review, or observation shall relieve Contractor of its responsibility under this Agreement.

## **7.0 PROGRESS MEETING**

**7.1** City's designated Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required by the City, during the term of any Task Order entered into under this Agreement. Contractor's Project Manager and all other appropriate personnel shall attend such meetings as designated by City's Project Manager.

## **8.0 SAFETY**

**8.1** Contractor shall be solely and absolutely responsible and assume all liability for the safety and supervision of its principals, employees, resident project representatives (and assistants) while performing Services provided hereunder.

## **9.0 REASONABLE ACCESS**

**9.1** During the term of this Agreement, City shall grant Contractor reasonable access to the City's premises, records, and files for purposes of fulfilling its obligations under this Agreement.

## **10.0 INSURANCE**

**10.1 Liability Amounts.** During the term of this Agreement, Contractor shall be responsible for providing the types of insurance and limits of liability as set forth below.

a. **General Liability.** The Contractor shall maintain comprehensive general liability insurance in the minimum amount of \$1,000,000.00 as the combined single limit for each occurrence, with a deductible no greater than \$5,000.00 unless a higher deductible is pre-approved by the City Manager, to protect the Contractor from claims of property damages and personal injury which may arise from any Services performed under this Agreement, whether such Services are performed by the Contractor or by anyone directly employed by or contracting with the Contractor.

b. **Automobile Liability.** The Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000.00 combined single limit bodily injury and minimum \$50,000.00 property damage as the combined single limit for each occurrence to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor.

c. **Environmental Impairment Insurance Minimum Requirements.** To the extent applicable to the Contractor, the Contractor shall maintain Environmental Impairment Insurance or "Pollution Insurance" if the Contractor may provide excavation or construction type services and will be locating portable fuel or lubricant storage tanks at the job site or will be storing or using hazardous chemicals on the job site, with a limit of not less than \$1,000,000.00 per occurrence and submit proof of same in the form of a certificate of insurance or an endorsement to their General Liability policy showing a pollution exclusion exception for each specific work product or storage container before work is begun.

Contractor shall work in compliance with the OSHA Hazardous Communication Standard and Florida Department of Environmental Protection guidelines and supply all information about hazardous chemicals being brought onto City property as required by the City's Safety and Loss Control Program.

d. **Workers' Compensation.** The Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing Work for the City pursuant to this Agreement.

e. **Federal Longshore and Harbor Workers' Compensation Act, and Jones Act.** To the extent applicable to the Contractor, the Contractor shall maintain coverage in accordance with both the federal Longshore and Harbor Worker's Compensation Act (LHWCA), and the federal Jones Act, on behalf of all employees who are to provide a service under this Agreement. Longshore and Harbor Worker's Compensation Act coverage addresses and includes all personnel subject to the provisions of the U.S. Longshore and Harbor Worker's Compensation Act. Contractor shall provide USH&L (U.S. Longshore and Harbor Worker's Compensation Act) insurance as is applicable. Jones Act insurance addresses and includes all personnel subject to the provisions of the federal Jones Act. Contractor shall provide such insurance coverage as is applicable. It is the responsibility of the Contractor to ensure that appropriate coverage and limits

of insurance are purchased to provide for all personnel subject to these acts and shall carry coverage in accordance with statutory limits.

**10.2 Special Requirements.** Current, valid insurance policies meeting the requirements herein identified shall be maintained during the term of this Agreement. All Certificates of Insurance shall be approved by the City prior to the commencement of any work. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. There shall also be a thirty (30) day advance written notification to the City prior to the renewal, non-renewal, cancellation or modification of any stipulated insurance coverage. **The City shall be an additional named insured on stipulated insurance policies included in section 10.1.a., 10.1.b and 10.1.c herein, as its interest may appear, from time to time.**

**10.3 Subcontractors.** All subcontractors employed by Contractor to perform any services hereunder shall fully comply with the insurance provisions contained in this paragraph.

## **11.0 COMPLIANCE WITH LAWS AND REGULATIONS**

**11.1** Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of Services under this Agreement.

## **12.0 REPRESENTATIONS**

**12.1** Contractor represents that the Services provided hereunder shall conform to all requirements of this Agreement and any Task Order, shall be consistent with recognized and sound marine construction practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the Services rendered. Contractor shall perform as expeditiously as is consistent with professional skill and care and the orderly progress of the Services performed hereunder. Contractor's services shall be consistent with the time periods established under this Agreement or the applicable Task Order. Contractor shall provide City with a written schedule for services performed under each Task Order and such schedule shall provide for ample time for the City to review, for the performance of subcontractors or consultants (if any), and for the approval of submissions by authorities having jurisdiction over the services. The Contractor's designated representative shall have the authority to act on Contractor's behalf with respect to the Services. In addition, Contractor's representative shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Services. Except with the City's knowledge and consent, the Contractor shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Contractor's professional judgment with respect to the Services. The Contractor shall review laws, codes, and regulations applicable to Contractor's Services. The Contractor's services and design shall comply with all applicable requirements imposed by all public authorities. The Contractor represents and warrants that it is familiar with, and accepts that it will perform the Services hereunder in a manner that complies with all applicable requirements of law, codes, and regulations. Contractor shall be responsible for the professional quality, technical accuracy and the coordination of all plans, studies, reports and other services furnished to the City



under this Agreement. Unless this Agreement is terminated by the City, or terminated by Contractor for nonpayment of any proper invoices, or the City exercises its rights to perform the Services pursuant to Section 2.2 herein, Contractor shall be responsible for the satisfactory and complete execution of the Services described in this Agreement and any Task Order. The Contractor represents that it will carefully examine the scope of services required by the City in and Task Order, that it will investigate the essential requirements of the services required by the Task Order, and that it will have sufficient personnel, equipment, and material at its disposal to complete the services set forth in the Task Order in a good professional and workmanlike manner in conformance with the requirements of this Agreement.

**12.2** Contractor represents that all principals, employees, and other personnel furnishing such Services shall be qualified and competent to perform the Services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best professional knowledge and judgment.

### **13.0 GUARANTEE AGAINST INFRINGEMENT**

**13.1** Contractor guarantees that all Services performed under this Agreement shall be free from claims of patent, copyright, and trademark infringement. Notwithstanding any other provision of this Agreement, Contractor shall indemnify, hold harmless, and defend City, its officers, directors, employees, agents assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, Services, or other item provided under this Agreement. Notwithstanding the foregoing, Contractor may elect to provide non-infringing services.

### **14.0 DOCUMENTS**

**14.1 Public Records.** Pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, Contractor agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission, of Contractor related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record, whether in the possession or control of the City or the Contractor. Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission of Contractor are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City's designated custodian of public records.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE CITY CLERK, AT (321) 433-8484, cshealy@cocoaf1.org, City Clerk's Office, 65 Stone Street, Cocoa, FL 32922.

Contractor is required to and agrees to comply with public records laws. Contractor shall keep and maintain all public records required by the City to perform the services as agreed to herein. Contractor shall provide the City, upon request from the City Clerk, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term. Upon completion of the Agreement, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that the public records be transferred, the Contractor shall continue to keep and maintain the public records upon completion of the Agreement and shall 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 information technology systems of the City. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied by the City or any other person, the City shall immediately notify Contractor of the request and the Contractor shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. If the Contractor does not comply with a public records request, the City may enforce this Section to the extent permitted by law. Contractor acknowledges that if the Contractor does not provide the public records to the City within a reasonable time, the Contractor may be subject to penalties under Section 119.10, Florida Statutes. The Contractor acknowledges that if a civil action is filed against the Contractor to compel production of public records relating to this Agreement, the court may assess and award against Contractor the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Contractor, be open and freely exhibited to the City for the purpose of examination, audit, or otherwise. Failure by Contractor to grant such public access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation. If the Contractor fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Contractor's failure to comply with this Section, the City shall collect from Contractor prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Contractor. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Contractor's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

**14.2 Reuse of Documents.** All documents, including but not limited to, drawings, specifications, and data, or programs stored electronically or otherwise, prepared by the Contractor

and its independent contractors or subcontractors pursuant to this Agreement or related exclusively to the Services described herein shall be owned by the City and may be reused by the City for any reason or purpose at any time. However, the City agrees that the aforesaid documents are not intended or represented to be suitable for reuse by the City or others on any undertaking other than the Work outlined in this Agreement. Any reuse for an undertaking other than for the Work without verification or adaptation by the Contractor, or its independent contractors and associates if necessary, to specific purposes intended will be at the City's sole risk and without liability or legal exposure to the Contractor.

#### **15.0 ASSIGNMENT**

**15.1** Contractor shall not assign or subcontract this Agreement, any Task Order hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of City. Any subcontractors employed by Contractor for any Work required under this Agreement shall require prior written approval from the City. Any attempt to assign or subcontract the responsibilities and payments under this Agreement without the express prior written consent of the City shall be grounds for termination of the Agreement.

**15.2** If, upon receiving written approval from City, any part of this Agreement is subcontracted by Contractor, Contractor shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

**15.3** If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Contractor, which shall take immediate steps to remedy the situation.

**15.4** If any part of this Agreement is subcontracted by Contractor, prior to the commencement of any Work by the subcontractor, Contractor shall require the subcontractor to provide City and its affiliates with insurance coverage as set forth by the City.

#### **16.0 INDEPENDENT CONTRACTOR**

**16.1** At all times during the term of this Agreement, Contractor, and any approved subcontractors, shall be considered an independent contractor(s) and not an employee(s) of the City.

#### **17.0 DEFAULT BY CONTRACTOR AND CITY'S REMEDIES**

**17.1** In addition to the City's right to terminate this Agreement for convenience under Section 18.0 of this Agreement, the City also reserves the right to revoke and terminate this Agreement for a default and rescind or suspend all rights and privileges associated with this Agreement, without penalty, based on a default including, but not limited to, any of the following circumstances, each of which shall represent a default and breach of this Agreement:

**a.** Contractor defaults in the performance of any material convenient or condition of this Agreement and does not cure such other default within thirty (30) calendar days after written

notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the Contractor shall have such time as is reasonably necessary to remedy the default, provided the Contractor promptly takes and diligently pursues such actions as are necessary therefor.

b. Contractor is adjudicated bankrupt or makes any assignment for the benefit of its creditors or Contractor becomes insolvent, or is unable or unwilling to pay its debts.

c. Contractor has acted grossly negligent, as defined by general and applicable law, in performing the services hereunder.

d. Contractor has committed any act of fraud upon or any unlawful act against the City or another party.

e. Contractor has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

f. Notwithstanding the aforementioned, in the event of a default by Contractor, the City shall have the right to exercise any other remedy the City may have by operation of law, without limitation, and without any further demand or notice.

## **18.0 TERMINATION**

18.1 Notwithstanding any other provision of this Agreement, the City reserves the right, in its best interest as determined by the City, to terminate the Agreement, without penalty, for convenience by providing the Contractor with thirty (30) days' written notice thereof.

18.2 In addition, the City shall have the right to terminate this Agreement, without penalty, if: (a) Contractor is in default pursuant to Section 17.0; (b) Contractor fails to comply with any condition or provision of this Agreement; or (c) Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy City may have under this Agreement.

18.3 In the event of termination of this Agreement, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work completed to the satisfaction of the City prior to the effective date of termination. The City may, upon written notice to the Contractor, terminate the right of the Contractor to proceed under the Agreement, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of termination, any completed Services performed by the Contractor under the Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the

Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.

#### **19.0 FORCE MAJEURE**

19.1 Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes (with the exception of Contractor's workforce); extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty days, either party may terminate this Agreement.

#### **20.0 TRADE SECRETS**

20.1 Contractor should not send or provide trade secrets to the City. If, however, trade secrets are claimed by Contractors, they will not be considered as trade secrets until the City is presented with the alleged trade secrets together with proof that they are legally trade secrets. The City will then determine whether it agrees and consents that they are in fact trade secrets. If Contractors fails to submit a claim of trade secrets to the City before obtaining the City's agreement, any subsequently-claimed trade secrets will be treated as public records and will be provided to any person or entity making a public records request for the information.

#### **21.0 GOVERNING LAW & VENUE**

21.1 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida.

#### **22.0 HEADINGS**

22.1 Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

#### **23.0 SEVERABILITY**

23.1 In the event any portion or part of thereof this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise be fully enforceable.



## **24.0 WAIVER AND ELECTION OF REMEDIES**

**24.1** Waiver by either party of any term, condition or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.

**24.2** No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

## **25.0 THIRD PARTY RIGHTS**

**25.1** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.

## **26.0 PROHIBITION AGAINST CONTINGENT FEES**

**26.1** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, 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 the Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

## **27.0 ENTIRE AGREEMENT**

**27.1** This Agreement, including any Task Orders and Schedules, Attachments, Appendix's and Exhibits attached hereto, constitute the entire agreement between City and Contractor with respect to the Services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

## **28.0 NO JOINT VENTURE**

**28.1** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

## **29.0 ATTORNEY'S FEES**

**29.1** Should any litigation arise concerning this Agreement between the parties, the parties agree to bear their own costs and attorney's fees, whether at settlement, trial or on appeal.

### **30.0 COUNTERPARTS**

30.1 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

### **31.0 DRAFTING**

31.1 City and Contractor each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties.

### **32.0 NOTICE**

32.1 Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid to:

**For Contractor:**

C&D Construction, Inc.  
395 S. Range Rd.  
Cocoa, Florida 32926  
Attention: Curtis Deen  
Phone 321-639-9198  
Fax 321-690-2291

**For City:**

City of Cocoa  
Attention: City Manager  
65 Stone Street  
Cocoa, Florida 32922  
(321) 433-8688 Phone  
(321) 433-8698 Fax

32.2 Either party may change the notice address by providing the other party written notice of the change.

### **33.0 SOVEREIGN IMMUNITY.**

33.1 The City intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. Contractor agrees

that City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person for over two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

#### **34.0 CORPORATE REPRESENTATIONS BY CONTRACTOR**

**34.1** Contractor hereby represents and warrants to the City the following:

a. Contractor is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

b. The undersigned representative of Contractor has the power, authority, and legal right to execute and deliver this Agreement on behalf of Contractor.

#### **35.0 INDEMNIFICATION**

**35.1** Contractor shall defend, indemnify and hold the City, its officers, agents, officials, representatives, employees, volunteers, and city attorneys (individually and in their official capacity) (hereinafter the "City"), harmless from any and all liability, loss, damages, expenses, injuries (including death), costs, claims or actions, of any type, including, but not limited to, reasonable attorney's fees in any legal proceeding through trial or appeal, which the City may hereafter sustain, incur or be required to pay, arising out of or resulting from any acts, errors or omissions of the Contractor, its agents, vendors, contractors, subcontractors, representatives, servants, or employees and persons utilized by the Contractor in the execution, performance, or nonperformance or failure to adequately perform Contractor's obligations pursuant to this Agreement, or for breach of, this Agreement or any Task Order or any subsequent amendments thereto.

The indemnification provided above shall obligate the Contractor to defend at its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its officers, employees, and city attorneys which may be covered by this indemnification. In all events the City and its officers, employees, and city attorneys shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with this indemnification provided herein.

**35.2** For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor expresses its willingness to enter into this Agreement with the

knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of the sum of any Agreement amount that is owed by the City for services actually performed by the Contractor to the City's complete satisfaction, and in no case shall exceed the amount provided in Section 33.1 herein. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28 Florida Statutes; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

**36.0 BONDS.**

**36.1** To the extent deemed necessary and required by the City or by law, Contractor shall supply a materials, performance and payment bond(s) in form approved by the City's City Attorney and in accordance with Florida law and in an amount specified in any Task Order.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**CITY:**

**CITY OF COCOA, FLORIDA**

By: 

Henry U. Parrish, III, Mayor

**CONTRACTOR:**

**C&D CONSTRUCTION, INC.**

By: 

Print Name/Title: Curtis Deen, President

**ATTEST:**

By: 

Carrie Shealy, City Clerk



## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

#### **MARINE CONSTRUCTION SERVICES AGREEMENT**

The Scope of Services to be provided will include, but is not limited to, the following tasks and certain specific projects:

- Routine shoreline debris removal as needed
- Emergency Shoreline cleanup after storm event
- Shoreline restoration including placing Geotextile fabric, installation of filter and armoring stone
- Installation and maintenance of Living Shorelines
- Marine Dock Construction (Timber, Concrete, other)
- Dock Repair and Reconstruction
- Bulkhead and Seawall Repair and Construction
- Underwater inspection of marine structures
- Above-water inspection of marine structures
- Dredging, removal and disposal of underwater spoil and debris
- Derelict Vessel removal and storage
- Installation of Turbidity Measures and emergency spill response
- Associated environmental permitting and survey service





Office of the City Clerk  
65 Stone Street | Cocoa, FL 32922  
Phone: (321) 433-8480 | Fax: (321) 433-8455

June 18, 2018

C & D Construction, Inc.  
395 S. Range Road  
Cocoa, FL 32926

**Re: Continuing Services Agreement for Marine Construction Services Agreement**

To Whom It May Concern:

Enclosed are two original agreements as noted above that were approved by City Council at their Regular meeting on June 12, 2018. Please have them both executed, and send them both back to me. I will then have our Mayor execute both on the City's behalf and I will return one, fully executed document to you at that time.

If you have any questions or need further assistance, please contact my office at (321) 433-8484.

Sincerely,

Carrie Shealy, MAA, MMC  
City Clerk



# **REQUEST FOR QUALIFICATIONS**

City of Cocoa, Florida

## **MARINE CONSTRUCTION SERVICES**



# **RFQ # Q-18-15-COC**

April 23, 2018

**Request for Qualifications (RFQ) #Q-18-15-COC  
MARINE CONSTRUCTION SERVICES**



Finance Department  
 Purchasing & Contracts Division  
 65 Stone St.  
 Cocoa, FL 32922

**ISSUE DATE: 04/23/2018**

Page 1 of 25

**PROPOSALS MUST BE**

**RECEIVED PRIOR TO 4:00**

**P.M. ON 05/24/2018**

**PURCHASING DIVISION CONTACT: SONJA HAMILTON**

PHONE NUMBER: (321) 433-8833

FAX: (321) 433-8860

E-Mail: [shamilton@cocoafl.org](mailto:shamilton@cocoafl.org)

PLEASE COMPLETE THE FOLLOWING AND SUBMIT THIS FORM WITH YOUR PROPOSAL	
Vendor Name:	Do you accept electronic payments (Mastercard) <input type="checkbox"/> YES <input type="checkbox"/> NO  Do you accept Visa? <input type="checkbox"/> YES <input type="checkbox"/> NO  List of Deviations (if any) attached Yes____ No____  If submitting a "NO RESPONSE", state reason: _____ _____
Address:	
City, State, Zip:	
Phone Number:	
Fax Number:	
E-Mail Address:	
FEIN Number:	

Response packages shall be mailed or hand-delivered to the Office of the Purchasing Manager, located at 65 Stone St., Cocoa, Florida 32922. Responses received after the specified time and date will not be accepted. The City will not be responsible for mail delays, late or incorrect deliveries. The clock located in the lobby of the Office of the Purchasing Manager will be the official authority for determining late responses.

One (1) original (MARKED "ORIGINAL") and FOUR (4) copies of all responses and required attachments must be executed and submitted in a sealed envelope. Respondent shall mark response envelope, RFQ# **Q-18-15-COC**. Respondent name and return address must be clearly identified on the outside of the envelope.

By submitting an RFQ proposal and executing below, the undersigned individual hereby represents and warrants that they have the full authority on behalf of Respondent to submit this RFQ package to the City of Cocoa, and bind the Respondent to the terms and conditions of this RFQ. The Respondent represents and warrants to the City of Cocoa that they have read, understand, and agree to abide by all the terms and conditions set forth in the RFQ Package and all subsequently issued addendums. Further, Respondent certifies, represents, and warrants that all information contained in Respondent's RFQ submittal is accurate and truthful and that the

City of Cocoa will rely on said information during the RFQ process. Respondent further understands and agrees that misleading, fraudulent, untruthful, and deceitful information, whether presented to the City in writing or verbally, shall be grounds for immediate disqualification. Additionally, Respondent agrees that the City of Cocoa shall have the sole discretion to rank respondents to this RFQ. The final ranking of the qualifications of all respondents by the City does not guarantee that any of the highest ranked respondents will be selected to perform the services required by this RFQ. The City may elect, at its sole discretion, to initiate negotiations to enter into one or more written agreements with selected respondents pursuant to this RFQ. Said agreements shall be approved separately by, and at the sole discretion of, the City Council of Cocoa, and shall depend on numerous factors such as any successful respondent offering fair, competitive and reasonable prices for their services and the respondent's ability to accept the terms and conditions required by the City. Further, Respondent agrees that the City has the right to reject, for any reason and without penalty, any and all submittal packages prior to and after the rankings are made by the City, and that the City has the right, for any reason and without penalty, to terminate any contract negotiations commenced under this RFQ with any respondent at any time. Respondent shall bear all costs associated with preparing and responding to this RFQ. The City of Cocoa will provide no compensation for such costs.

During the RFQ process, Respondent consents to the City of Cocoa conducting credit and corporate background checks on the Respondent. Further, the Respondent hereby consents and authorizes the City to contact any and all previous clients, and references, of Respondent to inquire about the Respondent's past or current performance on any other project that the City deems to be relevant to the services requested under this RFQ.

Respondent expressly acknowledges and represents and warrants that it will comply with the Anti-Lobbying requirement of this RFQ which is set forth in section I of this RFQ.

THE UNDERSIGNED RESPONDENT HEREBY AGREES TO THE TERMS AND CONDITIONS SET FORTH ABOVE AND CONTAINED ELSEWHERE IN THIS RFQ AS IF SET FORTH ABOVE.

---

Name of Respondent

---

Authorized Signature

---

Name & Marine Construction

---

Date

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## SECTION I

### INTRODUCTION

The City of Cocoa (hereinafter referred to as “City”) is requesting Statements of Qualifications from MARINE CONSTRUCTION firms to provide the City with

#### MARINE CONSTRUCTION SERVICES



RFQ **DUE DATE & TIME:** May 24, 2018 , AT 4:00 P.M. Qualifications packages shall be mailed or hand-delivered to the Office of the Purchasing Manager, located at 65 Stone St., Cocoa, Florida 32922. Packages are to be received **NO LATER THAN 4:00 P.M.** Packages received after the specified time and date will not be accepted. The City will not be responsible for mail delays, late or incorrect deliveries. The clock located at the reception desk in the lobby of Cocoa City Hall will be the official authority for determining the time that packages are received and for determining late responses.

All RFQ information and required attachments must be executed and submitted in a sealed envelope. Respondent shall mark envelope **RFQ No. 18-15-COC MARINE CONSTRUCTION SERVICES**. Respondent’s name and return address must be clearly identified on the outside of the envelope.

These documents constitute the complete set of terms and conditions, specification requirements, and forms. Any additional information should be attached to this format or the respondent may be disqualified.

Respondents shall submit FIVE (5) complete sets (one (1) original (marked “ORIGINAL”), and FOUR (4) copies of their response, complete with all supporting documentation. Responses submitted by facsimile or electronically will NOT be accepted. Responses which do not comply with these requirements may be rejected at the option of the City. It is the respondent’s responsibility to ensure that all submittals are in accordance with all addendums issued, if any. Failure of any respondent to receive any such addendum or interpretation shall not relieve such respondent from its terms and requirements. The RFQ and any Addendums are available online at <http://www.demandstar.com> .

Responses not submitted in the format set forth herein shall be rejected unless otherwise explained in the response documents.

For information concerning procedure for responding to this Request for Qualifications (RFQ), contact Sonja Hamilton, Purchasing Manager, Purchasing & Contracts Division at (321) 433-8833. Such contact is to be for clarification purposes only. Material changes, if any, to the scope of services or respondent procedures will only be transmitted by written addendum.

All questions about the meaning or intent of the RFQ Documents shall be submitted in writing and directed to the City of Cocoa, 65 Stone St., Cocoa FL 32922, Attention: Sonja Hamilton, Purchasing Manager, Purchasing & Contracts Division. Questions may also be sent via fax at (321) 433-8860 or e-mail at [shamilton@cocoafl.org](mailto:shamilton@cocoafl.org) . Questions received less than five (5) calendar days prior to the due date for the responses will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect and may not be relied upon by respondent in submitting their response.

**ANTI-LOBBYING PROVISION**

**COMPANIES AND PERSONS DESIRING TO RESPOND TO THIS RFQ ARE HEREBY NOTIFIED THAT ALL COMMUNICATIONS REGARDING THIS RFQ, WHETHER IN WRITING, ELECTRONIC, VERBAL, OR BY SOME OTHER MEANS, AND WHETHER MADE INDIRECTLY BY THIRD PARTIES OR DIRECTLY BY THE RESPONDENT, SHALL BE SUBMITTED TO THE CITY'S PURCHASING MANAGER, EXCEPT LEGAL MATTERS MAY BE DIRECTED TO THE CITY ATTORNEY DIRECTLY OR THROUGH THE PURCHASING MANAGER. EXCEPT AS EXPRESSLY REQUIRED BY THIS RFQ FOR FORMAL PRESENTATIONS (IF ANY), ANY INDIRECT OR DIRECT COMMUNICATIONS AND LOBBYING REGARDING THIS RFQ MADE TO MEMBERS OF THE CITY COUNCIL, MEMBERS OF THE SELECTION COMMITTEE, OR ANY OTHER CITY OFFICIAL ARE STRICTLY PROHIBITED AND SHALL CONSTITUTE GROUNDS FOR IMMEDIATE DISQUALIFICATION.**

**STANDARD TERMS & CONDITIONS**

**ACCEPTANCE AND REJECTION** - The City reserves the right to accept or reject any and all responses and to accept the response which best serves the interest of the City of Cocoa. The City may award sections individually or collectively, whichever is in its best interest, unless the respondent only intends to respond for the contract in its entirety.

**ASSIGNMENT** - Neither the contract nor payment due pursuant to this RFQ may be assigned. Any attempt to assign the responsibilities and payment under this RFQ without the express prior written consent of the City of Cocoa shall be grounds for termination of the contract.

**AWARD** - Award shall be generally made to the firm that demonstrates technical capability while most closely meeting the city's needs according to the evaluation criteria and factors designated in the solicitation. Further, once the City Council approves a ranking of the firms, the award will depend upon the successful respondent negotiating acceptable terms under a Services Agreement. **Respondents are hereby notified that should a respondent be selected to negotiate a contract with the City, the City will be paying significant attention to cost of services being offered. The successful respondent shall be the one that is not only the most qualified firm, but the firm that has also agreed to rates, fees and charges that the City of Cocoa deems to be fair, reasonable and competitive in the market place.** If the City pursues competitive negotiations with your firm and the City can not agree on fair, competitive, and reasonable rates, fees, and charges for services required by this RFQ, the City will cease negotiations with your firm. The City will then commence negotiations with the next ranked firm until the City has awarded a contract or rejected all of the proposals at its sole discretion.

**CONFLICT OF INTEREST** - The respondent certifies that this response has not been arrived at collusively or otherwise in violation of federal, state or local laws. Any purchase order, check requisition or contract from which any agent, officer or employee of the city or any relative thereof, will realize a financial gain, directly or indirectly, shall be void, except that before the execution of a purchase order, check requisition or contract, the Council shall have the authority to waive compliance with this section when it finds such action to be in the best interest of the City.

**DEVIATION FROM SPECIFICATION** - Any deviation from specifications and submittal requirements must be clearly stated, explained in detail and accepted by the City in writing. Otherwise items offered are expected to be in strict compliance with specifications and submittal requirements and the successful response shall be held accordingly.

**DISCRIMINATION STATEMENT:** An entity or affiliate placed on the Discriminatory Vendor List may not submit a response for a contract to provide goods or services to a public entity, may not submit a response on a contract with a public entity for the construction or repair of a public building or perform any public work, may not submit Proposals for leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under any contract with any public entity, and may not transact business with any public entity.

**ECONOMY OF PREPARATION:** The responses should be prepared simply and economically, providing a straightforward, concise description of the respondent's qualifications and ability to fulfill the requirements of the RFQ.

**F.O.B. POINT** - Products and materials related to the project are to be shipped F.O.B. to the department and address as identified on Purchase Orders.

**INFORMALITIES** - The City of Cocoa reserves the right to both waive any minor informality in responses and to determine, in its sole discretion, whether or not a particular informality is minor.

**INFORMATION AND LITERATURE** - Respondents are to furnish all information and literature requested. Failure to do so may be cause for rejection.

**INTERPRETATIONS** - Any questions concerning conditions and specifications shall be directed to the purchasing manager. Interpretations that may affect the eventual outcome of this RFQ will be furnished in writing to all prospective potential respondents. No interpretation shall be considered binding unless provided in writing by the City of Cocoa.

**NON-DISCRIMINATION** - The successful respondent will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap.

**PATENTS AND COPYRIGHTS** - The respondent will agree to hold harmless the City of Cocoa, its officers, agents and employees from liability of any kind, including cost and expenses, with respect to any claim, action, cost or judgment for patent or copyright infringements.

**PAYMENTS** - Upon acceptance of work by using department of the City, employees and others, it is understood and agreed that orders and services shall be shipped and performed at the established contract prices. Invoicing in variance with this will subject the contract to cancellation. The City shall make payment to the Contractor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes. The City reserves the right, with justification, to partially pay any invoice submitted by the Contractor when requested to do so by the using City department. Unless otherwise directed in the contract for services, all invoices shall be directed to the Accounts Payable Section, City of Cocoa, 65 Stone St., Cocoa, FL 32922, with a copy directed to the City department using the services.

**NOTE: ALL INVOICES MUST CLEARLY INDICATE THE CITY PURCHASE ORDER NUMBER.**

**PUBLIC ENTITY CRIMES** - A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a response on a contract to provide any goods or services to a public entity, may not submit a response on a contract with a public entity for the construction or repair of a public building or perform any public work, may not submit a response for leases of real property to a public entity, may not be awarded or

perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the Convicted Vendor List.

**PUBLIC RECORDS:** Florida law provides that municipal records shall, at all times, be open for personal inspection by any person. Section 119.01 Florida Statutes (The Public Records Law.) Unless otherwise provided by the Public Records Law, information and materials received by the City in connection with an RFQ response shall be deemed to be public records subject to public inspection upon award, recommendation for award, or 30 days after opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for under section 119.07, Florida Statutes and other applicable laws. If the respondent believes any of the information contained in his or her response is exempt from the Public Records Law, then the respondent must in his or her response, specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

**(a) 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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (321) 433-8484; [cshealy@cocoafl.org](mailto:cshealy@cocoafl.org); City Clerk's Office, 65 Stone Street, Cocoa, FL, 32922.**

**TAX EXEMPTIONS** - The City of Cocoa is sales tax exempt. The City of Cocoa's sales tax-exempt number is 85-8012621548C-8.

**TERMINATION FOR CAUSE:** If a respondent is awarded a contract under this RFQ, the successful respondent is hereby on notice that the contract shall be subject to termination in the event that the respondent breaches the contract, or respondent fails to fulfill in a timely and proper manner its obligations under this contract, or if the respondent is declared bankrupt or insolvent, or respondent is found to have committed fraud or any other unlawful act against the City or another party. The City may, upon written notice to the respondent, terminate the right of the respondent to proceed under the contract, and may hold the respondent liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the respondent under the contract shall, at the option of the City, become the City's property and the respondent shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The respondent, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the respondent, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the respondent can be determined.

**TERMINATION FOR CONVENIENCE:** If a respondent is awarded a contract under this RFQ, the successful respondent is hereby on notice that the contract shall also be subject to termination for convenience by the City. The City reserves the right, in its best interest as determined by the City, in its sole discretion, to cancel the contract by giving written notice to the respondent thirty (30) days prior to the effective date of such cancellation.

**TIME FOR CONSIDERATIONS – All Proposals will be considered after the time and date set for the opening of the Proposals and for a period up to ninety (90) days thereafter.**

**TRADE SECRETS** - Respondents should not send trade secrets. If, however, trade secrets are claimed by any respondent, they will not be considered as trade secrets until the City is presented with the alleged secrets together with proof that they are legally trade secrets. The City will then determine whether it agrees and consents that they are in fact trade secrets. If a respondent fails to submit a claim of trade secrets to the City before obtaining the City's agreement, any subsequently-claimed trade secrets will be treated as public records and will be provided to any person or entity making a public records request for the information (F.S. 119.01).

### **SPECIAL TERMS & CONDITIONS**

**ADDENDUM AND AMENDMENTS TO REQUEST FOR QUALIFICATIONS:** If it becomes necessary to revise or amend any part of this Request for Qualifications, the City's Purchasing & Contracts Division will furnish the revision by written Addendum to all prospective respondents who are recorded with the City as having received an original Request for Qualifications. Addenda information will be posted on Onvia DemandStar at <http://www.demandstar.com>. Respondents are responsible to check this location for updates.

**COMMITTEE MEETINGS/PRESENTATIONS INFORMATION:** The Notice of Committee Meetings/Presentations is generally posted at least seventy-two (72) hours in advance of such meetings/presentations. However, the City reserves the right to hold Committee meetings with less notice if necessary upon reasonable notice. Proposers are responsible to check the following locations for updates on this proposal's status: on the bulletin board located in the main lobby of the City Hall building at 65 Stone St., Cocoa, FL 32922; or on the City's Web Page <http://www.cocoafl.org>, under the City Clerk. City Council meetings, at which matters regarding this RFQ may be considered, are noticed by the City Clerk's office under the general rules and procedures of the City Council.



**INDEMNIFICATION STATEMENT** – By submitting a response document signed by an authorized agent of the respondent, respondent (contractor) acknowledges and accepts the terms and conditions of the following Indemnification Statement in the event of contract award:

“For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the contractor shall indemnify, hold harmless and defend the City of Cocoa, its officers, agents, officials, attorneys, representatives and employees (hereinafter the “City”) against any and all liability, loss, cost, damages, expenses, injuries (including death), claim or actions, of whatever type, including but not limited to attorney's fees in any legal proceeding through trial and appeal, which the City may hereafter sustain, incur or be required to pay, arising out of, wholly or in part, or due to any act or omission of contractor, its agent(s), vendors, contractors, subcontractor(s), representatives, servants, or employees in the execution, performance or non-performance or failure to adequately perform contractor's obligations pursuant to this RFQ and any subsequent contract.”

**LIMITATION OF LIABILITY STATEMENT** – By submitting a response document signed by an authorized agent of the respondent, respondent acknowledges and accepts the terms and conditions of the following Limited Liability Statement in the event of contract award:

“The City desires to enter into this contract only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the contract, so that the City's liability for any breach never exceeds the sum of any contract amount that is owed by the City for services actually performed by the respondent to the City's complete satisfaction. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, respondent expresses its willingness to enter into this contract with the knowledge that the respondent's recovery from the City to any action or claim arising from the contract is limited to a maximum amount of the sum of any contract amount that is owed by the City for services actually



performed by the respondent to the City's complete satisfaction. Nothing contained in this paragraph or elsewhere in this contract is in any way intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28 Florida Statutes; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest."

**PROPOSER EXPENSES** - No out-of-scope services shall be provided in the absence of prior, written authorization in the form of a written supplemental agreement and issuance of an appropriate amendment to the contract. The City will not pay a retainer or similar fee. The City is not responsible for any expenses that respondent may incur in preparing and submitting responses called for in this request. The City will not pay for any out-of-pocket expenses, such as word processing; photocopying; postage; per diem; travel expenses; and the like, incurred by the respondent. The City will not be liable for any costs incurred by the respondent in connection with any interviews/presentations (i.e., travel, accommodations, etc.).

**REQUEST FOR ADDITIONAL INFORMATION/CLARIFICATION:** The respondent shall furnish such additional information/clarification as the City may reasonably require. This includes, but is not limited to, information that indicates financial resources as well as the ability to provide and maintain the services requested. The City reserves the right to make investigations of the qualifications of the respondent as it deems appropriate including, but not limited to, a background investigation of service personnel to be conducted by the City of Cocoa Police Department or its designees.

**TERMS:** Contracts awarded and entered into under this RFQ shall be project or task based, subject to deadlines mutually agreed to by the parties. Therefore, the contract term will be based on the tasks assigned under the contract for the MARINE CONSTRUCTION SERVICES and shall be subject to the City's right to terminate the Contract for cause or convenience. The term of the Agreement will not exceed **THREE (3) years with up to TWO (2) one-year renewals**. However, the City will reserve the right to extend the Agreement beyond that period if the City Council determines that extension is required based upon public necessity to complete a pending task related to this RFQ.

### **STANDARD INSURANCE REQUIREMENTS**

All qualified firms **MUST** provide written proof of insurance and demonstrate that they maintain all applicable insurance coverage as specified below as a condition precedent to contracting with, and performing any work for, the City of Cocoa. **Copies of all applicable current insurance certificates must be attached to the Respondent's submittal.**

Excluding professional liability policies which prohibit naming the City as an additional named insured, the Certificate of Insurance must be made to the City of Cocoa, 65 Stone St., Cocoa, FL 32922 and should reference the operation and name the City as an additional insured.

Prior to renewal, non-renewal, cancellation, or change or modification of any insurance policy, at least 30 days advance written notice shall be given to the City of Cocoa.

All Certificates of insurance shall be approved by the Project Manager **prior** to the commencement of any work. Minimum coverage with limits and provisions are as follows:

### **LIABILITY INSURANCE**

#### **1. COMMERCIAL GENERAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR CONTRACTS VALUED AT LESS THAN \$15,000:**

It is required that individuals and firms contracting with the City of Cocoa, where the total contract or job value is LESS than \$15,000, maintain Commercial General Liability insurance with a minimum per occurrence limit of not less than \$200,000 and with a deductible amount not greater than \$5,000. It is further required that the City of Cocoa be named as an additional insured to the contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR CONTRACTS VALUED AT \$15,000 OR MORE:**

It is required that individuals and firms contracting with the City of Cocoa, where the total contract or job value is \$15,000 or MORE, maintain Commercial General Liability insurance with a minimum per occurrence limit of not less than \$1,000,000.00 and with a deductible not greater than \$5,000. It is further required that the City of Cocoa be named as an additional insured to the contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

**AUTOMOBILE LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR ALL CONTRACTS:**

It is required that individuals and firms contracting with the City of Cocoa who own licensed motor vehicles that will be utilized in connection with any City contract or job maintain automobile liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

It is further required that individuals and firms contracting with the City of Cocoa who lease, rent, or borrow licensed motor vehicles that will be utilized in connection with any City contract or job be required to maintain non-owned or hired automobile liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

**PROFESSIONAL LIABILITY INSURANCE MINIMUM REQUIREMENTS:**

Professionals and professional corporations, associations, and firms who contract with the City of Cocoa to provide professional services are required to maintain Professional Liability Insurance and submit proof of same in the form of a certificate of insurance before work is begun.

**ENVIRONMENTAL IMPAIRMENT INSURANCE MINIMUM REQUIREMENTS:**

Individuals or firms who contract with the City of Cocoa to provide excavation or construction type services and who will be locating portable fuel or lubricant storage tanks at the job site or who will be storing or using hazardous chemicals on the job site are required to maintain Environmental Impairment Insurance or "Pollution Insurance" with a limit of not less than \$1,000,000 per occurrence and submit proof of same in the form of a certificate of insurance or an endorsement to their General Liability policy showing a pollution exclusion exception for each specific work product or storage container before work is begun. Contracts with such firms shall include a provision that they work in compliance with the OSHA Hazardous Communication Standard and Florida Department of Environmental Protection guidelines and supply all information about hazardous chemicals being brought onto City property as required by the City's Safety and Loss Control Program.

**WORKERS' COMPENSATION INSURANCE MINIMUM REQUIREMENTS:**

Individuals or firms must demonstrate that they have worker's compensation coverage at levels required by Florida law.

## SECTION II

### 1. GENERAL INFORMATION



The City of Cocoa (hereinafter referred to as “City”) is requesting Statements of Qualifications (SOQ) from qualified contractors to provide Marine Construction Services and related services on facilities and property under jurisdiction of the City. The selected Marine Construction Services Companies will enter into a Continuing Service Agreement with the City to perform work as a Marine Construction Services provider for the city of Cocoa. Firms will compete with other selected firms for work tasks associated with maintenance activities as well as for construction of elements of the city’s future Riverfront Master Plan. The value of construction projects anticipated within the life of this contract may total \$3 Million, however individual projects under this contract may not exceed \$2 Million each.

Project teams consisting of a qualified lead construction firm and other qualified subcontractors will also be considered. In addition, the City reserves the right, at its sole discretion, to select among the respondents of this RFQ or through other bidding procedures, other construction firms to handle component parts of the anticipated projects if the City deems it in the City’s best interests to do so.

Services to be provided include, but are not limited to, the services described in the Scope of Services. The anticipated projects will be subject to the City securing funding. If adequate funding is not acquired, the anticipated projects may be cancelled or downsized by the City without notice and without penalty. The selected firm (s) will be required to enter into an Agreement in a form approved by the City Attorney and City Council, and determined by the City to be fair, competitive and reasonable.

### 2. SCOPE OF SERVICES

The City of Cocoa is soliciting SOQs from interested Marine Construction Services firms to provide specialized Marine Construction Services work on property and facilities owned and/or operated by the City. The selected construction firms will enter into a Continuing Services Agreement with the City of Cocoa to perform work as a Marine Construction Services Provider for a three-(3) year period, renewable for two (1) one-year periods. The scope of services to be provided will include, but is not limited to the following:

- Routine shoreline debris removal as needed
- Emergency Shoreline cleanup after storm event
- Shoreline restoration including placing Geotextile fabric, installation of filter and armoring stone
- Installation and maintenance of Living Shorelines
- Marine Dock Construction (Timber, Concrete, other)
- Dock Repair and Reconstruction
- Bulkhead and Seawall Repair and Construction
- Underwater inspection of marine structures
- Above-water inspection of marine structures
- Dredging, removal and disposal of underwater spoil and debris
- Derelict Vessel removal and storage
- Installation of Turbidity Measures and emergency spill response
- Associated environmental permitting and survey services

The work under this RFQ will be on an as-needed basis. Individual task orders will be authorized and performed as projects are identified by the City. When a project is identified by the City, the City will notify each contractor selected on this RFQ and under a Continuing Services Contract of the project. The city will supply relevant information concerning project (for example specifications, design drawings, sketches, and schedule expectations). Contractors will be given the opportunity to submit a bid based on project information. Contractor's response time for developing a bid when notified of a project will be based on the type of work to be assigned and will be stipulated by the City; however, the Contractor will be typically expected to respond from within 5 days up to 21 days as determined by the City. The City will review bids submitted and will select a firm based on lowest, responsive bid. If for any reason a Contractor's work schedule will not allow them to perform the requested work, then the next lowest bidder will be contacted to perform the requested work assignment. The bid shall include the names and dollar value of work provided by subcontractors. The city reserves the right to approve subcontractors or place limits on the work provided by subcontractors.



It is anticipated the City will enter Continuing Services Contracts with at least three companies to perform a portion or all of the services listed above. Qualified firms wishing to respond to the RFQ must provide all services described in this document, whether directly or through sub-contractors. The City reserves the right to approve or disapprove any sub-contractors. This does not, however, limit the use of qualified sub-contractors.

The Successful Proposer (s) will appoint one of their employees as the key contact for approval by the City Project Manager.

It is the City's belief that the services required are adequately described herein. Therefore, any negotiated contract, which may result from this RFQ, must include the entire effort required of the proposer to provide the service described. Specifically, no additional fees shall be allowed for any additional services performed for any reasons whatsoever except those directly attributable to the City's errors or omissions. A provision to this effect shall be included in any negotiated contract.

### **3. MINIMUM RESPONDENT QUALIFICATIONS**

The City wishes to assess the respondent's experience with services that are similar to those that would be envisioned in the Scope of Services associated with this contract. To familiarize the City with the applicable work experience, each respondent shall provide the following information:

- Evidence that they have been in the business of providing Marine Construction Services for a period of at least three (3) years
- A list, description, and approximate value of related projects completed within the last three years
- A list of major equipment owned or available to the contractor to be used on city projects
- Qualifications of Key Personnel that will provide services under this contract
- Names of Permitting, Survey, or other sub consultants
- Special Insurance Requirements are as follows:

WORKER'S COMPENSATION INSURANCE, FEDERAL LONGSHOREMEN'S AND HARBORWORKER'S ACT, AND JONES ACT. The CONTRACTOR will provide Workers Compensation Insurance, the Federal Longshoremen's and Harbor worker's Act, and the Federal Jones Act coverage on behalf of all employees who are to provide a service under this Contract. It is the responsibility of the vendor to ensure that appropriate coverage and limits of insurance are purchased to provide for all personnel subject to these acts and shall carry coverage in accordance with statutory limits.. Long Shoremen's Harbor Worker's Compensation coverage include all personnel are subject to the provisions of the U.S. Longshoreman's & Harbor Workers' Compensations Act and related acts (USH&L) shall be covered under USH&L insurance provided by the contractor as required by this agreement. It is the responsibility of the contractor to ensure that appropriate coverage and limits of insurance are purchased to provide for all personnel subject to these acts

### SECTION III

#### RFQ SUBMITTAL DOCUMENTS

For the response to be considered complete and timely, Respondent must submit one (1) original **marked "ORIGINAL"**, and FOUR (4) copies of the proposal must be received by the City of Cocoa on or before 4:00 P.M., May 24, 2018

Respondents must include the following information in their proposal:

**Title Page:** Title Page shall show the RFQ subject title and proposal number; the firm's name; the name, address and telephone number of a contact person; and the date of the proposal. **Pages 2&3 of this document may be used as your title page.**

**Cover Letter:** The response shall contain a cover letter signed by a person who is authorized to commit the Respondent's offer to perform the work included in the RFQ and should identify all materials and enclosures being forwarded in response to the RFQ.

**Table of Contents:** The Table of Contents shall provide a listing of all major topics, their associated section number, and starting page.

**Executive Summary:** The Executive Summary section of the proposal shall be limited to five (5) typewritten pages. The purpose of the Executive Summary is to provide a high-level description of the Respondent's ability to meet the requirements of the RFQ and approach to the project.

**General Information:** The General Information section of the proposal shall be limited to two (2) typewritten pages. The purpose of the General Information section is to provide a brief discussion of Respondent's business history and current purpose/function in the marketplace.

**Summary of Qualifications:** The Summary of Qualifications section of the proposal shall be limited to twenty (20) typewritten pages. Indicate the Respondent's background in providing these services to governmental entities. Provide a listing of comparable client references that are using the Respondent's professional services, (i.e., client name, address, telephone number, contact person and length of time service was provided). Indicate specifically the members of the firm who will have primary responsibility for the City's contract. Also indicate all key individuals and sub-consultant's (if any) and their tasks and/or areas of expertise.

**Resumes and Attachments:** Resumes and additional information which the Respondent feels will assist in the evaluation should be included.

**Additional Required Proposal Submittal Forms:** Reference Sheets, Addenda Acknowledgements, Questionnaires, Agreements, Certificates of Insurance, Affidavit of Existing or Prior Contracts with the City, and other materials requested by the City.

**Written Response to Evaluation Criteria:** When compiling their responses, sections should be tabbed and labeled; pages should be sequentially numbered at the bottom of the page; proposals should be bound in a manner that can be removed and to allow flat stacking for easy storage; **do not use three ring binders or permanent binding**; and sections should be compiled in the sequence list above. Maximum number of pages shall be fifty (**50**) pages, not including tabs and dividers.

## SECTION IV

### RFQ TIME LINE

The City reserves the right to establish and change the schedule of the RFQ process at any time, with or without notice and without penalty. However, the **anticipated** schedule for this RFQ is as follows:

<u>STAGE</u>	<u>DATE</u>
RFQ Issued:	4/23/18
RFQ Advertised:	4/26/18 & 5/3/18
Deadline for Respondent Questions:	5/17/18 by 5:00pm
Responses/Addendum Issued by City:	5/21/18 by 5:00pm
RFQ Submission Deadline:	5/24/18 4:00pm
Final Ranking and Recommendation of Firms by SC:	TBD
City Council consideration of SC Recommendation and City Council's decision regarding Contract Negotiations:	TBD
Contract Award by Council (including an initial task order):	TBD



### SELECTION

The City wishes to avoid the expense to the City and to respondents of unnecessary oral presentations. Therefore, the City will select the highest ranking service providers based on the written submissions only.

The Selection Committee will deliberate and prepare a recommended ranking of the qualifications of the Respondents that presented based on the written proposals. **The deliberations and ranking recommendation occur at a noticed meeting of the Selection Committee. The final ranking will be submitted to the City Council as a recommendation only.** The City Council has the right to accept, reject, or modify the recommendation as it deems in the best interests of the City of Cocoa. The City Council will render, at its sole and absolute discretion, the final decision on the ranking received from the Selection Committee and the award of any and all contracts

under this RFQ. The City Council's decision shall constitute the final decision of the City of Cocoa regarding this RFQ.

## **SECTION V**

### **EVALUATION PROCEDURE**

It is the intent of the City that all construction firms responding to this RFQ who meet the requirements contained in this RFQ shall be ranked, at the City's sole and absolute discretion, in accordance with the criteria and factors established in these documents. The City will consider all responsive and responsible responses received in its evaluation and award process.

### **EVALUATION FACTORS**

The City's evaluation factors will include consideration of, but will not be limited to the following:

	<b>Description</b>	<b>Page Limit</b>	<b>Weighting</b>
1	Firm's Qualifications and Experience	3	30%
2	Proposed Team Members Experience and Training	4	30%
3	Reference Projects	5	30%
4	Owner/Client References	1	10%

### **OTHER APPLICABLE MANDATORY CRITERIA**

The following represent additional mandatory criteria (See Section VIII Affidavit):

- 1) The contractor is a licensed business entity in Florida and said license is in good standing.
- 2) The contractor has no legal or professional conflict of interest with regard to any other work performed by the firm for the City of Cocoa or for any other person or entity or with respect to the scope of services required by this RFQ.
- 3) The contractor adheres to the instructions and requirements in this RFQ in preparing and submitting the response including, but not limited to the Anti-Lobbying provision.

**EACH RESPONDENT SHALL BE REQUIRED TO ADDRESS EACH OF THE EVALUATION FACTORS (#1 THROUGH #4) IN THE ORDER LISTED ABOVE AND THE OTHER APPLICABLE MANDATORY CRITERIA IN WRITING AS PART OF THE RFQ SUBMITTAL PACKAGE. IF ANY OF THE FACTORS OR CRITERIA IS NOT APPLICABLE, THE RESPONDENT IS INSTRUCTED TO WRITE "NOT APPLICABLE" AS AN ANSWER.**

## SECTION VI

The firm shall provide a minimum of three (3) business related references for which they are currently providing, or have provided within the last seven (7) years, services similar to the scope of services required by [this RFQ](#).

1. Company Name \_\_\_\_\_  
Contact Name and Title \_\_\_\_\_  
Address \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Duration of Contract or business relationship \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Company Name \_\_\_\_\_  
Contact Name and Title \_\_\_\_\_  
Address \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Duration of Contract or business relationship \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Company Name \_\_\_\_\_  
Contact Name and Title \_\_\_\_\_  
Address \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Duration of Contract or business relationship \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_



**SECTION VII  
NOT APPLICABLE**

**SECTION VIII****AFFIDAVIT OF OTHER APPLICABLE MANDATORY CRITERIA**

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

CITY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_, who, after first being duly sworn, upon oath, deposes and says:

1. My name is \_\_\_\_\_ and I am over the age of eighteen (18) years.
2. I have personal knowledge of the facts contained in this Affidavit, and I know these facts to be true and correct.
3. I currently serve in the position of \_\_\_\_\_ for \_\_\_\_\_ (hereinafter "Respondent") and have been employed by Respondent since \_\_\_\_\_.
4. I am familiar with the current professional licensing status of Respondent.
5. I have assisted in preparing the Respondent's response to the City of Cocoa RFQ for Marine Construction Services and I am familiar with the contents of said response.
6. I am also familiar with the other applicable mandatory criteria listed in Section V of the City of Cocoa RFQ for Marine Construction Services; and
7. Based on my personal knowledge and belief, I state as follows:
  - A. Respondent is duly licensed to practice in the State of Florida, and said license is in good standing with the State of Florida;
  - B. There are no legal or professional conflicts of interest with regard to any work performed by the Respondent for the City of Cocoa or any other person or entity, or with respect to the scope of services required by the City of Cocoa RFQ for Marine Construction Services; and
  - C. The Respondent adhered to the instructions set forth in the City of Cocoa RFQ for Marine Construction Services in preparing and submitting the Respondent's response including, but not limited to the Anti-Lobbying provision.

FURTHER AFFIANT SAYETH NAUGHT.

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

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

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

The foregoing instrument was sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ [ ] who is personally known to me, or [ ] who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the State and County last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

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

\_\_\_\_\_  
My Commission Expires:

### Scrutinized Company Certification

This certification is required pursuant to Florida State Statute 287.135, 287.012 and 215.473.

As of July 1, 2011, a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to §215.473, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

**THIS CERTIFICATION FORM MUST BE COMPLETED AND INCLUDED IN YOUR BID RESPONSE. FAILURE TO SUBMIT THIS FORM AS INSTRUCTED SHALL RENDER YOUR BID SUBMITTAL NON-RESPONSIVE.**

The Vendor, by virtue of the signature below, certifies that:

- a. The Vendor, owners, or principals are aware of the requirements of Section 287.135, Florida Statutes, regarding Companies on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
- b. The Vendor, owners, or principals, are eligible to participate in this solicitation and not listed on either the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
- c. If awarded the Contract, the Vendor, owners, or principals will immediately notify the CITY in writing if any of its principals are placed on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

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

\_\_\_\_\_  
(Printed Name and

Marine Construction)

\_\_\_\_\_  
(Name of Vendor)

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name of person whose signature is being notarized) as \_\_\_\_\_ (Marine Construction) of \_\_\_\_\_ (Name of Vendor), known to me to be the person described herein, or who produced \_\_\_\_\_ (type of identification) as identification, and who did/did not take an oath.

NOTARY PUBLIC:

\_\_\_\_\_  
(Signature) State of \_\_\_\_\_ at Large (Seal)

\_\_\_\_\_ my commission expires: \_\_\_\_\_

(Print Name)

### **Scrutinized Company Provisions**

**SCRUTINIZED COMPANIES:** Section 287.135, Florida Statutes prohibits agencies from contracting with companies for goods or services of \$1 million or more, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. A company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List may not bid on, submit a proposal for, or enter into a contract with an agency or local government entity for goods or services of \$1 million or more.

Pursuant to Chapter 215.473, Florida Statutes, the Florida State Board of Administration is charged with maintaining a complete list of scrutinized companies. Scrutinized companies are judged according to whether they meet the following criteria:

Sudan:

1. Have a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power generation activities, or
2. Have a material business relationship involving the supply of military equipment, or
3. Impart minimal benefit to disadvantaged citizens that are typically located in the geographic periphery of Sudan, or
4. Have been complicit in the genocidal campaign in Darfur.

Iran:

1. Have a material business relationship with the government of Iran or a government-created project involving oil related or mineral extraction activities, or
2. Have made material investments with the effect of significantly enhancing Iran's petroleum sector.

The SBA is not responsible for compliance with Chapter 287.135, Florida Statutes. The SBA's responsibilities are solely focused on the Protecting Florida's investments Act and Chapter 215.473 as it related to the identification of the "Scrutinized Companies" that have prohibited business operations in Sudan or Iran.

List is found at:

<http://www.sbafla.com/fsb/Home/ProtectingFloridasInvestmentAct/tabid/751/Default.aspx> then click on the "Other Links" to the List

or

<http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=iePW9X713-E%3D&tabid=751&mid=2409>

**Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;
  - b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation of this proposal.

**Instructions for Certification (A)**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or any explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agree by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause Marine Construction “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,” provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

#### **Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agree by submitting this proposal that it will include this clause Marine Construction Services "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitation for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant:		Date:
Signature of Authorized Certifying Official:	Marine Construction:	

END