

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of approving the utilization of an existing contract between the City of Daytona Beach and Salty Marine Services, doing business as Sea Tow Daytona/Ponce/New Smyrna for the removal of derelict vessels in the Halifax River on an as needed basis within budgeted allocations per fiscal year.

Date: July 27, 2023

City Code, Section 10-51 prohibits floating structures and live-aboard vessels from being anchored or moored in the portion of Halifax River lying within the jurisdiction of the city. There have been several incidents where vessels are abandoned or lost within the Halifax River and caused damage to residential docks, boathouses and seawalls. Salty Marine Services, doing business as Sea Tow Daytona/Ponce/New Smyrna has offered to assist in the removal of these vessels and offer the pricing listed within their agreement with the City of Daytona Beach.

Utilizing an existing contract with a larger agency, the City is able to secure better pricing for these projects. Per the City's purchasing policy, the City of Daytona Beach has approved utilizing the agreement.

In order to experience cost savings, staff recommends the Council approve a piggyback agreement from the City of Daytona Beach with Salty Marine Services, doing business as Sea Tow Daytona/Ponce/New Smyrna for the removal of derelict vessels from the Halifax River on an as needed basis within budgeted allocations per fiscal year.

GENERAL SERVICES TERM CONTRACT**CONTRACT NO. 22531**

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Salty Marine Services, Inc. also DBA. SEATOW DAYTONA/PONCE/NEW SMYRNA, a Florida Profit Corporation ("CONTRACTOR"). City and Contractor may also be referred to herein individually as a "Party" or collectively as the "Parties."

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

Section 1. Scope of Services. CONTRACTOR will provide Removal of Derelict vessels services to the CITY as described in the Request for Proposal **Exhibit A** attached hereto and incorporated herein .

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

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

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

Section 3. Compensation and Payments; Limitations.

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

(b) The CITY will pay CONTRACTOR fees as described in the fee attached hereto as Exhibit B only for the work that is completed.

(c) **Price Redeterminations.**

Once each year during the term of the Contract, including any extension or renewal periods thereof, the Contractor may, but is not obligated to, petition the Purchasing Agent for one or more price redeterminations where such price redetermination(s) is/are necessitated by documented increases in the cost of wages, fuel, or materials. Petitions for price redeterminations shall be made within thirty (30) days of the anniversary date of the Contract (i.e., the calendar day and month when the Contract became effective) and only after the Contract has been in effect for at least one year. Any such petition shall be made pursuant to the provisions of this section and only for those price redetermination categories specified herein. Unless otherwise expressly set forth in this Agreement, no other price redeterminations shall be allowed. All price redeterminations, once issued, shall be prospective from the date of approval unless otherwise approved by a duly executed amendment to this Agreement.

1. *Basis for Price Redeterminations.* The Contractor may petition the Purchasing Agent for price redetermination based on the increased costs of wages, fuel, or materials. Price redeterminations will be based solely upon changes in pricing or costs documented by either the Employment Cost Index (ECI) or Producer Price Index (PPI), whichever is applicable, as published by the Bureau of Labor Statistics. The base index number for the ECI will be for the quarter in which the ITB opens. The base index number for the PPI will be for the month the ITB opens. Any subsequent price redeterminations will use the last price redetermination approved for that price redetermination category as the "base index number." The City shall have the right to audit the Contractor's records, including, but not limited to, payroll, materials, and fuel cost records, to verify or otherwise investigate the validity of any price redetermination request.

2. *Wage Price Redetermination.* When requesting a price redetermination based upon an increase in wage costs, the Contractor shall refer to and utilize the Employment Cost Index, Total Compensation, Private Industry, Index Number and Occupational Group as prepared by the Bureau of Labor Statistics in the U.S. Department of Labor <https://stats.bls.gov/data/>. The base figure will be tied to Installation, maintenance, and repair occupations under the heading all industries. Wage price redetermination increases shall be granted only by reason of wage increases associated with the Contractor's employees or subcontractors performing work or services pursuant to the Agreement.

3. *Minimum Wage Price Redetermination.* If the minimum wage increases during the term of the agreement, including any renewal or extension period thereunder, the Contractor may petition the Purchasing Agent for price redetermination for those job categories where the pay to the Contractor's employee(s) is the current minimum wage. Upon verification of the information provided, the City will grant an increase of exactly the amount of the minimum wage increase (not the percentage increase). The Contractor must increase the pay to the employee(s) by the amount the Contractor has requested, which shall not exceed the amount of the minimum wage increase. The amount paid to the Contractor will be the increase plus any written and documented increase in FICA, Medicare, and Workers' Compensation insurance. The Contractor must supply written documentation of any other increase that is beyond the scope and control of the Contractor. All written documentation must satisfy the reasonable expectations of the Purchasing Agent and Internal Auditor.

3.1. *Example:* Minimum wage increases from \$7.31 to \$7.56 per hour. The Contractor may petition for an increase of \$0.25 per hour to be paid to the affected employee(s) and shall provide written and documented cost increases for FICA, Medicare and Workers' Compensation. The resulting increase in costs shall be incorporated into fees/rates billed to the City.

3.2. If the Contractor bills the City at a higher price according to any price redetermination granted by the City, and the Contractor fails to increase the hourly rate paid to the employee for the same period, the Contractor will be considered in Agreement default and the Agreement will be immediately terminated

4. *Fuel Price Redetermination.* If/when the price of fuel increases by a minimum of ten (10%) percent, the Contractor may petition the Purchasing Agent for a fuel price redetermination. As a condition of petitioning for a fuel price increase, the Contractor shall be required to petition for a fuel price redetermination decrease if/when the price of fuel decreases by a minimum of ten (10%) percent. Failure to make such petition may be grounds for Agreement termination and shall entitle the City to a refund of the cumulative increase in pay to the Contractor due to any prior fuel price redetermination increase(s). Fuel price redetermination must be based solely upon changes as documented by the Producer Price Index (PPI) for the commodities "Unleaded Gasoline-WPU057104" or "#2 diesel fuel - WPU057303," as such may be applicable to the Contractor's operations in connection with the Contractor's performance of the Agreement.

5. *Materials Price Redetermination.* At the anniversary date of the Agreement, the Contractor may petition the Purchasing Agent for a materials price redetermination. As a condition of petitioning for a materials price increase, the Contractor shall be required to petition for a materials price redetermination decrease

if/when the price of materials used by the Contractor in connection with the Agreement decreases. Failure to make such petition may be grounds for Agreement termination and shall entitle the City to a refund of the cumulative increase in pay to the Contractor due to any prior materials price redetermination increase(s). Materials price redetermination must be based solely upon changes as documented by the Producer Price Index (PPI) for the commodity "Solid waste collection-Solid waste collection services, not seasonally adjusted-PCU5621115621112", as published by the Bureau of Labor Statistics.

6. Price Redetermination Calculation. All Price Redeterminations shall be calculated as follows:

6.1. Example: Contractor indicated on the Submittal Form that thirty percent (30%) of the cost to provide the product/service is directly attributed to the redetermination category (wages, fuel, or materials).

Current applicable PPI =	\$200.50
Base index PPI =	- \$179.20
PPI increase dollars =	\$21.30
PPI increase percentage (\$21.30 , \$179.20 = .1189).....	11.9%
Unit cost of the service is.....	\$100.00
30% of \$100.00 is directly attributed to the redetermination category....	\$30.00
\$30.00 × 11.9% =	\$3.57
New unit price for the product/service is (\$100 + \$3.57)...	\$103.57

7. Expiration Upon Failure to Agree to Price Redetermination. If the City and the Contractor cannot agree to a price redetermination pursuant to the terms and conditions of this section, then the Agreement will automatically expire without penalty or further expense to either party after a period of six (6) months following the Contractor's initial request for such price redetermination. Requests for price redeterminations not made in accordance with the provisions of this section shall be deemed null and void and shall not be a valid reason or pretext for expiration or termination of the Agreement. If the Agreement expires pursuant to the terms and conditions of this section, the City reserves the right, at no expense, penalty, or consequence to the City, to award any remaining tasks thereunder to the next available most responsive and responsible Contractor.

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

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR will submit invoices only for services provided and accepted in accordance with the requirements of this Contract. CONTRACTOR may invoice the CITY no more frequently per event, and no sooner than 30 days after the Effective Date. Contractor shall submit separate invoices for each location.

(b) The CITY will pay based on the unit prices set forth in the Exhibits for work completed by CONTRACTOR during the period billed, provided that such work is reflected on CONTRACTOR's invoice.

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

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

(e) Invoices should be sent to the employee stated in the notice section.

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

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

Section 7. Documents.

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

(b) CONTRACTOR understands and agrees that City will have the right to reuse any plans and specifications, including construction drawings, that Contractor is required to provide to City pursuant to this Contract without having to obtain further approvals from or providing additional compensation to Consultant. City understands and agrees that Consultant will not be liable for City's use of such plans and specifications other than for the purposes intended by this Contract.

Section 8. Public Records.

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

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

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

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

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

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

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

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

Section 9. Effective Date and Term.

The Effective Date of this Contract is the date on which the last Party signs it. The successful Contractor(s) shall be awarded a Contract for an initial 3 year term, commencing on the effective date.

The City will have the option to renew this Contract for up to 2 Terms of 1 year each, by providing Contractor written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by Contractor.

Section 10. Termination of Contract.

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

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

(2) Except as provided in Section 10(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if CONTRACTOR or any of CONTRACTOR'S personnel, in connection with the services or rights provided herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

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

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in Section 10(b) for a termination for convenience.

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

Section 11. Suspension of Services. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR written notice of suspension. CONTRACTOR will suspend activities immediately

upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

Section 12. Indemnification. CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or used by CONTRACTOR in the performance of this Contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

CITY will indemnify and hold harmless the CONTRACTOR, including the CONTRACTOR's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CITY, or CITY's officers, employees, or agents, including subcontractors and other persons employed or used by CITY for violations of Section 705.103(2)(a)1.b Florida Statute.

Section 13. Insurance. CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or sub-contractor providing such insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) Coverage and Amounts.

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

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

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

added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

3. **Watercraft Protection & Indemnity** in the amount of \$1,000,000 per occurrence of liability coverage if contractor is using watercraft during performance of these services. Coverage shall be included for loss of life, injury and sickness, wreck removal costs, cleanup costs, collision liability and damage to piers, docks, jetties, and other fixed or floating objects. Coverage shall apply to owned and non-owned or hired vessels if used. City shall be named as additional insured.

4. **Marine/Vessel Pollution Liability Insurance** in the amount of \$1,000,000 per occurrence and shall include coverage for spills and threats of spills from vessels. This includes but is not limited to clean-up obligations mandated by local and national laws, orders, rules, and regulations; as well as clean-up, third party property damage, subsistence, assessment of and damage to natural resources, loss of revenues and profits by third parties' loss of public services, and defense. City shall be named as additional insured.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the Insurer will waive its rights of subrogation, if any, against the CITY on each of the types of required insurance coverage listed above.

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

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

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

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

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

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

(f) **Risk Manager.** All references to the Risk Manager will be deemed to include the Risk Manager's designee.

Section 14. Reserved.

Section 15. Notice. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

CITY:

Glen Urguhart Chief Building Official
City of Daytona Beach
301 Ridgewood Avenue
Daytona Beach, FL 32114
FAX: 386-671-5988
Email: gurguhart@cityofdaytona.com
Phone: 386-671-8142

CONTRACTOR:

TITLE: Nik Foster, Resident
SUPPLIER NAME: Salty Marine Services, Inc. d/b/a Sea Tow Daytona/Ponce/New Smyrna
ADDRESS: 4958 S. Peninsula Dr.
CITY/ST/ZIP: Ponce Inlet, FL 32127
FAX: (888) 515-0238
EMAIL: nfoster@seatow.com
PHONE: (386) 547-3965

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

Section 16. Personnel.

(a) CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense; all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

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

(b) **E-Verify.** - The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract

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This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the City's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The City reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the City develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

Section 18. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

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

Section 19. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

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

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

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

Section 20. General Terms and Conditions.

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

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

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

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

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

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

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

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

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

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

(k) **Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is

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beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

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

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

(n) **Incorporation of RFP and Proposal.** The CITY's Request for Proposals 22261, and the CONTRACTOR's responsive proposal are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between **Composite Exhibit C** and other provisions of this Contract, including **Exhibits A and B**, this Contract will govern.


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

SIGNATURES ON THE NEXT PAGE

A handwritten signature in black ink, appearing to be 'KAY', is written over the page number 'Page 11 of 20'.

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

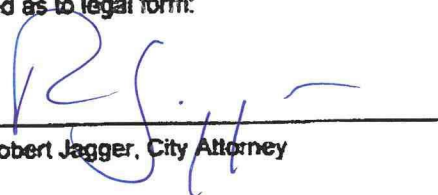
THE CITY

By: 
Derrick L. Henry, Mayor


Date: 2-15-23

Attest: 
Letitia LaMagna, City Clerk

Approved as to legal form:

By: 
Robert Jagger, City Attorney

CONTRACTOR

By: 
Printed Name: Nik Foster

Title: President

Date: 10/13/22



EXHIBIT A: SCOPE OF SERVICES

The intent of this Scope of Services is to describe the minimum requirements for Derelict Vessel Removal Services. This applies to all vessels, which local law enforcement agencies have designated as derelict or abandoned and includes, but not limited to, personal watercraft, airboats, barges, boats, and floating docks. This project may be sponsored in part by the Florida Fish and Wildlife Conservation Commission (FWC) through the Derelict Vessel Removal Grant Program. As such, the project will be administered in adherence with grant award agreements between the City of Daytona Beach (City) and FWC's best management practices for derelict vessel removal guidelines (Attachment 1).

1. Services shall include, but not limited to; mobilization, towing, recovery, demolition, and proper disposal of identified vessels. The contractor shall provide all materials, equipment, labor, other related incidentals, and facilities required to perform services under this agreement.
2. The contractor shall maintain a detailed record of all recovered vessels and submit to the City following each removal or group of removals utilizing the Derelict Vessel Data Sheet (Attachment 2). The record shall include the date and time of recovery, vessel type, length, name of vessel (if available), Florida (FL) registration or other registration number (if available), hull identification number (if available), and condition of the vessel. The contractor shall acquire at least four (4) photographs of each recovered vessel for submittal in electronic format with the Derelict Vessel Data Sheet. Photos shall document the vessel prior to removal, during the removal process, and vessel's demolition following removal.
3. All work shall be conducted using appropriate FWC Best Management Practices (Attachment 1) and take all necessary precautions to reduce the disturbance of the surrounding environment. Precautionary measures shall include; minimization of impacts to mangroves, seagrasses, and other native plants and animals. Vessels situated in near-shore, shallow water areas shall be approached in a manner to avoid impacts and disturbance of wetland or upland areas. The contractor shall avoid the dragging of vessels when possible.
4. The contractor shall be responsible for determining if the vessel contains any pollutants that may be harmful to the environment if discharged during any phase of removal, transport, or disposal. If pollutants are present, then before transport, the contractor shall remove and properly dispose of the pollutants in accordance with all applicable local, state, and federal laws. Containment booms and recoverable absorbent materials shall be available and utilized as needed to contain and recover fuel, oil, or other discharges that occur during vessel recovery. The term pollutants shall include, but are not limited to, motor/vessel fuels, lubricants, and lead-acid batteries.
5. The contractor will be required to follow all permit requirements associated with applicable vessel removal permits outside of Florida Administrative Code 62-330.051 (FDEP Permit Exempt Activities). The removal of derelict vessels, as defined in Section 823.11(1), F.S., by federal, state, and local agencies, provided:
 - a. The derelict vessel case has been completed as specified in Section 705.103, F.S., and has been entered into the Statewide Derelict Vessel Database maintained by the Florida Fish and Wildlife Conservation Commission;
 - b. All work is done in a manner that, to the greatest extent practicable, avoids additional dredging or filling, grounding or dragging of vessels, and damage to submerged resources such as seagrass beds, oyster beds, coral communities, mangroves, other wetlands, and live bottom; and
 - c. An absorbent blanket or boom shall be immediately deployed on the surface of the water around the derelict vessel if fuel, oil, or other free-floating pollutants are observed during the work.
6. No removal activities shall commence before authorization of removal by the City of Daytona Beach Chief Building Official. The contractor shall provide 24-hour notice to the Chief Building Official or their designee before to commencing any removal activities.

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Best Management Practices for DV removal

Derelict Vessel Removal Process

Derelict vessels are existing impacts to the environment as well as boating safety hazards, impediments to navigation, and esthetic nuisances. Typically these vessels are found grounded on the edges of active waterways where they may have physical impacts on benthic and shoreline communities. However, the impact of these vessels is not limited to their immediate location. If left unattended, the influences of winds and tides continue to push the boats causing greater impact as they become more deeply mired into the environment. Early extraction of these vessels will avoid and minimize the environmental impacts. In addition to these physical impacts resulting from the movement of these vessel through the environment; there is the long term effect caused by their continued degradation and decay in the marine environment. These vessels may be constructed of various materials, such as wood, steel, aluminum, or fiberglass; each having varying degrees of resilience and can remain in the marine environment for extended periods of time. With the progression of time; the environmental impacts increase with the shading from the hull and displacement of live bottom and emergent vegetative communities resulting from the expansion of the debris field as the vessels disintegrates. The impacts resulting from the removal of these vessels during any stage is less than the impacts caused by the long-term presence of the vessel in the marine environment. Therefore the early detection and removal of these abandoned and derelict vessels is the best means of minimizing the individual or cumulative impacts to the environment.

Derelict Vessel Removal (FDEP) Permit Exemption

An Exemption under Florida Administrative Code Chapter 62-330-051(5)(g) by Florida Department of Environmental Protection, has been established for the removal of derelict vessels. Based on the presumption that the extraction of these vessels from the marine environment will cause only minimal environmental impacts and in turn avoid the long-term impacts resulting from the degradation of the vessel at it current location. The environmental impacts are ameliorated by the application of the best management practices referenced below.

Florida Administrative Code Chapter 62-330-051(5)(g)

(g) The removal of derelict vessels, as defined in Section 823.11(1), F.S., by federal, state, and local agencies, provided:

1. The derelict vessel case has been completed as specified in Section 705.103, F.S., and has been entered into the Statewide Derelict Vessel Database maintained by the Florida Fish and Wildlife Conservation Commission;

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2. All work is done in a manner that, to the greatest practicable extent, avoids additional dredging or filling, grounding or dragging of vessels, and damage to submerged resources such as seagrass beds, oyster beds, coral communities, mangroves, other wetlands, and live bottom; and
3. An absorbent blanket or boom shall be immediately deployed on the surface of the water around the derelict vessel if fuel, oil, or other free-floating pollutants are observed during the work.

General Derelict Vessel Removal and Environmental Protection Best Management Practices

The following best management practices (BMP's) will be employed by the marine contractor during the removal of derelict vessels. These BMP's will be incorporated into the contract for each vessel removal project. The marine contractor selected for the project will be required to show proof of their ability to meeting the BMP requirements with their contingency of equipment, staff and expertise in the removal of derelict vessels.

Compliance with these BMP's will be monitored by the County and by local Florida Fish and Wildlife Conservation Commission law enforcement officers. These BMP's are as follows:

a. All Work Is To Meet The Following Requirements:

1. Operations are to be limited to daylight hours.
2. Operations are to be staged from an upland area.
3. All work is to be performed in a manner that avoids and/or minimizes impacts to live bottom and other resource areas (e.g., seagrass beds, oyster beds, wetlands, mangroves, and other sensitive habitats) while approaching, working in, and leaving the derelict vessel site.
4. All work shall avoid impacts to manatees, sea turtles, and other species listed by the state and federal government as threatened or protected.
5. The Contractor will remove all contaminants and pollutants including fuels, batteries, paints, solvents, and engine from the derelict vessel prior to extraction. Any contaminant or pollutant found to be contained within a derelict vessel shall be removed by the Contractor, placed in an approved container, and disposed of properly. The placement of an absorbent blanket on the surface of the water around the derelict vessel within the turbidity barrier is required where free floating product (gas/oil) is observed.
6. The Contractor is to provide appropriate best management practices (BMPs) approved by the Florida Department of Environmental Protection for erosion control and turbidity protection while each derelict vessel is being removed. In areas of low to moderate currents, a Type II floating turbidity barrier will be

installed within a ten (10) foot radius of the vessel being removed prior to starting any removal activities. The turbidity barrier shall be anchored to the bottom of the waterway.

7. The Contractor is to provide appropriate BMPs for erosion control and turbidity prevention around the vessels/barges being used to remove the derelict vessel and around the perimeter of any upland staging site (where necessary).
8. The Contractor is to monitor turbidity levels throughout removal work.
9. In an effort to reduce turbidity, a crane, winch and/or approved alternate method is to be used to raise the derelict vessel from the water.
10. The Contractor will assess turbidity levels and allow them to return to an acceptable level similar to pre-project condition prior to removal of turbidity measures.
11. The dragging of vessels is to be avoided both on and off-shore. All vessels/barges used in vessel removal shall continually monitor water depths to avoid running aground.
12. The Contractor will load derelict vessels onto a barge and/or flat bed truck (or similar) for proper disposal.
13. The Contractor is to photo-document all removals as described in Item 6 below with pictures taken before, during and after removal. The Contractor will provide a daily written report of all removal activities.

b. For Derelict Vessels That Are Floating or Lightly Aground:

1. The vessel is to be pumped out as needed and extracted (floated out) during high water.
2. Following extraction, the vessel is to be towed from the grounded location to a boat ramp or other removal point while avoiding and/or minimizing impacts to live bottom areas.

c. For Derelict Vessels That Are Hard Aground:

1. The vessel is to be approached using shallow draft vessels.
2. The vessel is to be extracted using a crane from a shallow draft deck barge, by hand using the best available tools, or similar approach to minimize impacts to the site and surrounding areas.

d. For Derelict Vessels Sunken in Shallow Water:

1. Install and inflate flotation bags as needed.
2. Lift the vessel with barge mounted crane or similar equipment.

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Derelict Vessel Removal Form

As part of my duties and assignment I have investigated the below vessel and determined the vessel is Derelict, as defined by Florida State Statute. I confirm that all required notices have made in accordance with Florida State Statute. I am requesting the vessel be submitted to the State of Florida Fish and Wildlife Commission for grant approval and removal.

Case Number: _____ **Date of Discovery:** _____

Vessel Information

- Vessel Name: _____
- Vessel Make/Model: _____
- Vessel Type: _____
- Power: _____ Length: _____ Hull Type: _____
- Vessel Registration: _____
- Hull Number: _____
- Vessel Coordinates: (Degrees-Decimal Minutes) Example: 30° 26.222 (N) / 84° 16.649 (W)
 - _____ (N) _____ (W)
- Description of Vessel Location: _____
- Description of Vessel Condition: _____
- Water Depth: _____ Other Hazards: _____
- County of Vessel's Location: _____

Owner/Responsible Parties

- ☐ **Owner**
- First Name: _____ Middle Name: _____ Last Name: _____
- Street Address: _____ City: _____ State: FL ZIP: _____
- Secondary Address: _____ City: _____ State: _____ ZIP: _____
- DOB: _____ D.L.#: _____ D.L. (State): _____
- ☐ **Co-owner** ☐ **Lienholder**
- First Name: _____ Middle Name: _____ Last Name: _____
- Street Address: _____ City: _____ State: _____ ZIP: _____
- Secondary Address: _____ City: _____ State: _____ ZIP: _____
- DOB: _____ D.L.#: _____ D.L. (State): _____

Florida State Statute Requirements for Removal

- ☐ **Derelict Vessel Notice Sticker placed on vessel:**
 - o Date: _____
- ☐ **Vessel Owner Identified:** ☐ Yes ☐ No
- ☐ **Vessel Owner Contacted:** ☐ Yes ☐ No
 - o **By:** ☐ Phone ☐ Face-to-face
 - o **Date Contacted:** _____
- ☐ **Certified mail to last registered owner:**
 - o **Returned:** ☐ Unclaimed ☐ Claimed on: _____
 - o **Hearing requested by the vessel owner:** ☐ Yes ☐ No
- ☐ **Charging affidavit completed:**
 - ☐ **Arrest**
 - ☐ **Direct Filed**
 - o **Statute Charged:**
 - ☐ **823.11**
 - ☐ **376.15**
- ☐ **Registration/Title freeze was put in place with the DHSMV:** ☐ Yes ☐ No
 - o Date: _____
- ☐ **Quote obtained for removal of vessel:** ☐ Yes ☐ No
 - o **Estimated Cost of Removal:** _____

Investigated By:

Sign: _____ Print: _____
Date: _____

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Sea Tow Daytona/Ponce/New Smyrna
5954 Kendrew Dr.
Port Orange, FL 32127
P 386.767.1508
F 888.515.0238
seatow.com

Price Proposal

ITEM DESCRIPTION	YEAR 1
REMOVAL OF SUNKEN VESSEL (Fiberglass hulls)	(Per Foot)
Vessels less than 25'	\$160
Vessels 26' - 31'	\$175
Vessels 32' - 40'	\$190
Vessels 41' - 55'	\$200
Vessels 56' - 79'	\$275
Vessels 80'+	\$325
VESSEL DEMOLITION & DISPOSAL (Includes containers, landfill fees, crushing/destruction)	(Per Foot)
Vessels less than 25'	\$180
Vessels 26' - 31'	\$190
Vessels 32' - 40'	\$200
Vessels 41' - 55'	\$225
Vessels 56' - 79'	\$275
Vessels 80'+	\$325
SHIP BREAKING/HULL CUTTING (As necessary for aluminum or steel hulled vessels)	(Per Foot)
Vessels less than 25'	\$1050
Vessels 26' - 31'	\$955
Vessels 32' - 40'	\$875
Vessels 41' - 55'	\$875
Vessels 56' - 79'	\$1250
Vessels 80'+	\$1250
MISCELLANEOUS (As necessary depending on the project)	
Crane Barge (per day, plus mob/demob & travel days)	Cost + 10%
120 Ton Crane (Per day, includes counterweights, transport fees, regulatory surcharges)	Cost + 10%
Marina Travel Lift (LOA x Per Foot)	\$25

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

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