

# City of South Daytona

Office of the City Manager / Department of Public Works

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3080



## MEMORANDUM

## AGENDA ITEM

### Item # 10

Date: December 14, 2021

**To:** James L. Gillis, Jr., PE, City Manager

**From:** Brian Peek, PE, Public Works Director

**Re:** Consideration of approving continuing contract agreements with the eight firms selected by the City Council to provide Civil Engineering, Geotechnical Engineering, Transportation Engineering, Environmental Engineering, Landscape Architecture and Land Surveying services to the City of South Daytona from the responses to our Request for Qualifications (RFQ) No. 21-007

**Date:** December 2, 2021

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At the November City Council Meeting, the Council authorized staff to negotiate with the below identified firms a continuing contract agreement for a term of five (5) years with the option for the City to extend for one additional three (3) year term. Staff has satisfactorily negotiated each agreement and requests final approval from the City Council.

- Mead & Hunt Inc.
- Sliger & Associates
- Environmental Consulting and Technology, Inc.
- Universal Engineering Sciences
- Marquis Latimer + Halback, Inc.
- Parker Mynchenberg & Associates Inc.
- Traffic Engineering Data Solutions Inc.
- Zev Cohen & Associates

As all eight agreements contain essentially the same language, a representative agreement is attached for your review. Staff is recommending that the agreements be approved and executed as negotiated.

**MASTER AGREEMENT AND  
CONTINUING CONTRACT FOR PROFESSIONAL SERVICES**

**THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES** (hereinafter this “Agreement”) is made and entered into this **14<sup>th</sup>** day of **December 2021**, by and between the **CITY OF SOUTH DAYTONA**, a municipal corporation duly incorporated pursuant to the laws of the State of Florida, with administrative offices at 1672 South Ridgewood Avenue, South Daytona, Florida 32119, (hereinafter the "CITY") and [REDACTED], whose principal business address is [REDACTED] (hereinafter "CONSULTANT").

**WITNESSETH**

**WHEREAS**, the CITY is a municipal corporation duly incorporated pursuant to the laws of the State of Florida, having a responsibility to provide certain services to benefit the citizens of the City of South Daytona; and

**WHEREAS**, the CITY owns and operates a variety of public facilities and improvements; and

**WHEREAS**, the CITY has engaged multiple consulting firms through a continuing contract with each, to provide and furnish the CITY with labor, services, and supervision necessary to provide various engineering, landscape architecture, surveying, and related professional services as assigned by written work authorization; and

**WHEREAS**, CONSULTANT has been approved by the CITY to provide such services to the CITY as set forth herein; and

**WHEREAS**, CONSULTANT may be required to investigate, analyze, evaluate, report, coordinate, prepare plans, specifications and contract documents, perform construction engineering services, construction management and observation, surveying services, etc. for any of the aforementioned disciplines, and related matters, as well as any other engineering assignments on request of the CITY. The CITY may require, based upon CONSULTANT’s evaluation, to identify needs, develop and improve programs, establish cost effective priorities for making improvements and develop a short-term or a longer-range program for implementation on request; and

**WHEREAS**, the CITY has followed and complied with the selection and negotiation process in accordance with the Florida Consultants’ Competitive Negotiation Act (Section 287.055, Florida Statutes, as amended).

**NOW THEREFORE** in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
2. **Definitions and Identifications.**
  - a. **Compensation:** Means the total amount paid by the CITY for professional services.
  - b. **Continuing Contract:** Means a contract for professional services entered into between the CITY and the CONSULTANT, in accordance with the provisions of Section 287.055, Florida Statutes, under which the firm provides professional services to the CITY for projects in which the estimated construction cost of each individual project under the contract does not exceed \$4,000,000.00, for study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.
  - c. **Professional Services:** Means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by Florida Statutes, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor and mapper in connection with his or her professional employment or practice.
  - d. **Project:** Means that fixed capital outlay study or planning activity authorized by the Council.
  - e. **Project Manager:** Means that person identified in specific Work Authorizations for a specific Project.
3. **Specific Provisions.**
  - a. **Term; Termination.**
    - i. **Term.** This Agreement shall be for an initial Term of five (5) years with the CITY having the option to renew for an additional three (3) year Term thereafter unless either party notifies the other party of intent not to renew, with such notice being given not less than sixty (60) days prior to the end of any annual term, or unless otherwise terminated as provided herein.
    - ii. **Termination at Will.** This Agreement may be terminated by the CITY in whole or in part at any time without cause by the CITY giving written notice to CONSULTANT not less than thirty (30) days prior to the date of termination.
    - iii. **Termination for Cause.** This Agreement may be terminated by either party for cause by the CITY or the CONSULTANT giving written notice to the other party not less than ten (10) days prior to the date of termination.

- iv. In the event of any termination, CONSULTANT will be paid for all services rendered to the date of termination, including pre-authorized extraordinary expenses.
- b. **Consulting Services.** CONSULTANT agrees to provide continuing consulting, review, and advisory services as requested by the CITY. No minimum amount of professional services, compensation, or exclusivity will be assured to CONSULTANT.
- c. **Scope of Service Available.**
  - i. This Agreement anticipates a variety of projects being requested by the CITY to be provided by the CONSULTANT as determined necessary by the CITY.
  - ii. The range of services available from CONSULTANT includes but are not limited to services related to the following:
    - (1) CONSULTANT shall provide and furnish the CITY with all labor, services, and supervision necessary to perform each work order project as assigned.
    - (2) Services may include but shall not be limited to the following disciplines: structural, electrical, mechanical, building, airport, stormwater, utilities, water/wastewater, environmental, street/roads, process evaluation, cost-benefit analysis, land surveying, and general engineering and planning services.
    - (3) CONSULTANT may be required to investigate, analyze, evaluate, report, coordinate, prepare plans, specifications, and contract documents, perform construction engineering services, etc., for any of the aforementioned disciplines, related matters, as well as any other engineering assignments on request of the CITY. The CITY may require CONSULTANT, based upon CONSULTANT's evaluation, to identify needs, develop and improve programs, establish cost effective priorities for making improvements, and develop a short-term or a longer-range program for implementation on request.
- d. **Compensation.**
  - i. For work performed on an hourly basis, compensation shall be based upon the rate schedule set forth in **Exhibit "A"** which is attached hereto and incorporated herein by reference.
  - ii. For projects where the scope of services can be clearly defined in advance of the work effort, compensation may be based on an agreed lump sum amount. CONSULTANT shall provide a spreadsheet outlining tasks and man hours to justify the lump sum amount.
  - iii. The CITY shall not pay for out of pocket expenses which should be factored into the quote and compensation initially authorized. Unforeseen extraordinary expenses may be eligible for reimbursement if such reimbursement is requested in writing prior to expenditure together with an explanation of the nature and necessity of the expense as well as the reason the expense was not reasonably foreseeable so as to be included in the initial authorization. This paragraph shall not be deemed to authorize extension of deadlines otherwise applicable to a Project.
  - iv. The CITY shall reimburse CONSULTANT for any subconsultants authorized by the CITY such as geotechnical, electrical, or other such professionals at direct cost.

- v. The CITY shall reimburse CONSULTANT for payment of any permit application fees at direct cost.

e. **Services; Work Authorization.**

- i. All work to be performed by CONSULTANT under this Agreement shall be authorized in writing by the CITY. Such authorization will be referred to as a “Work Authorization” and shall reference this Agreement. Work Authorizations shall be in a form substantially similar to the form attached hereto as **Exhibit “B”**. In the event of an emergency situation, where the scope of services cannot be clearly defined in advance of the work effort, no work shall commence without the prior written authorization of the City Manager or designee.
- ii. Work Authorizations shall contain a description of the work to be undertaken, a budget amount of the fee to be paid, and a time schedule. Budget amounts shall not be exceeded unless prior written approval and an increase in funds available are provided by the CITY. In the event the CITY does not approve a revised budget and additional funding, and the need for such action is not shown to be the fault of CONSULTANT, then the Work Authorization shall be terminated and CONSULTANT shall be paid in full for all work performed to that point.
- iii. The form and format of the budget described in paragraph 3.e.ii. above shall be in sufficient detail so as to identify the various elements of cost and shall be subject to the approval of the CITY.
- iv. Work Authorizations may contain additional provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instruction or provisions shall not be construed as a modification to this Agreement.
- v. When CONSULTANT and the CITY enter into a Work Authorization wherein the term of the Work Authorization expires on a date that is later than the date that this Agreement expires, then CONSULTANT and the CITY agree that the terms of this Agreement are automatically extended until the expiration or full completion of the requirements of the Work Authorization has been performed. Cancellation by the CITY of any remaining work prior to the full completion of the requirements of the Work Authorization shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the Work Authorization extends beyond the expiration of this Agreement. It does not apply when a Work Authorization expires or is cancelled prior to the expiration of this Agreement.
- vi. A specific Work Authorization may contain a provision for assessment of liquidated damages against CONSULTANT for failure to complete the services in a timely manner.

f. **Payment for Services.**

- i. Upon receipt of the final work product in accordance with a Project, together with the CONSULTANT’s final invoice the CITY will diligently review same. When the CITY finds that the work performed pursuant to this Agreement and the applicable Work Authorization is fully performed, the Project Manager will issue a final certificate which indicates that the work provided for has been completed and that the Project Manager recommends that the entire balance found to be due to

CONSULTANT shall be paid to CONSULTANT, within the time required by the Florida Prompt Payment Act, as may, from time to time be amended; provided, however, that if a Work Authorization for a particular Project provides for monthly invoices or for an alternate billing schedule, CONSULTANT shall submit invoice(s) detailing all fees and expenses and in such event, the Work Authorization shall control, and the CITY shall pay subject to the upper limit or lump sum fees set out in each Work Authorization. Before issuance of final certificate, CONSULTANT shall submit a final contractor's affidavit satisfactory to the CITY that all subcontractors, subconsultants, and other indebtedness connected with the work have been paid.

- ii. CONSULTANT guarantees to amend, revise, replace, or correct to the satisfaction of the CITY any error appearing in the work as a result of CONSULTANT's failure to comply with the warranties and representations contained herein. If the CITY deems it expedient to require CONSULTANT to correct deficient or defective work, and equitable deduction from the contract price shall be made therefor, or in the alternative, the CITY, at its option, may seek damages.
- iii. Neither inspection nor payment, including final payment, by the CITY shall relieve CONSULTANT from its obligations to do and complete the work product in accordance with this Agreement.

g. **Notices.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified or by facsimile transfer with confirmation thereof, or in person with proof of delivery. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the place for giving of notice.

- i. CITY: City of South Daytona, Attention: City Manager, 1672 South Ridgewood Avenue, South Daytona, Florida 32119.
- ii. CONSULTANT:

h. **Insurance.** Throughout the Term of this Agreement, CONSULTANT shall maintain in force at its own expense, insurance as follows:

- i. **Workers Compensation:** Workers' Compensation Insurance with statutory limits, including coverage for Employer's Liability, with limits not less than \$100,000 each accident, \$100,000 each disease, and \$500,000 each aggregate disease.
- ii. **General Liability:** Commercial General Liability with limits not less than \$1,000,000 each occurrence combined single limit of liability for bodily injury, death, and property damage, and personal injury resulting from any one occurrence, including Broad Form Commercial General Liability and coverage for Independent Contractors.
- iii. **Automobile Liability:** Comprehensive or Business Automobile Liability Insurance with not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for owned, hire, and non-owned vehicles as applicable. CONSULTANT and/or its subconsultant shall take out and maintain these coverages as shall protect it against claims for damages

resulting from bodily injury, including wrongful death and property damage which may arise from the operations of any owned, hired, or non-owned automobiles and/or equipment used by him or her in any capacity in connection with the carrying out of this contract.

- iv. **Professional Liability:** CONSULTANT and its officers, employees, and/or agents will provide the CITY a Certificate of Insurance evidencing professional liability insurance with limits not less than \$1,000,000 aggregate with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Agreement, including but not limited to design errors and omissions. CONSULTANT shall maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of completion of the Project. In the event that CONSULTANT goes out of business during the Term of this Agreement or the three (3) year period described above, CONSULTANT shall purchase Extended Reporting Coverage for claims arising out of CONSULTANT negligent acts, errors, and omissions during the term of the Professional Liability Policy.
- v. CONSULTANT shall furnish the CITY with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY is to be specifically included as an additional insured and Loss Payee on all policies required by paragraph 3.h., except Workers' Compensation and Professional Liability. In the event the insurance coverage expires prior to the completion of the Project, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The policy shall provide a thirty (30) day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities.
- vi. Any and all of CONSULTANT's subcontractors shall be required to include the CITY and CONSULTANT as an additional insured and Loss Payee on their general liability and automotive insurance policies.
- vii. Said insurance coverages procured by CONSULTANT as required herein shall be considered, and CONSULTANT agrees that said insurance coverages it procures as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance available to CONSULTANT, and that any other insurance, or self-insurance available to CONSULTANT shall be considered secondary to, or in excess of, the insurance coverage(s) procured by CONSULTANT as required herein.
- viii. Nothing herein shall be construed to extend CITY's liability beyond that provided in section 768.28, Florida Statutes.

#### 4. **General Provisions.**

##### a. **Indemnification.**

- i. Irrespective of any insurance carried by CONSULTANT, pursuant to this Agreement or otherwise, CONSULTANT shall indemnify, and hold harmless the CITY and all of the CITY's officers, agents, and employees from and against all claims, liability, judgments, costs, damages, interest, penalties, loss, and expense,

including reasonable collection expenses, attorneys' fees, and court costs arising out of any accident, casualty, or other occurrence causing injury to any person or property arising from CONSULTANT's negligence, recklessness, or intentional wrongful misconduct or the negligence, recklessness, or intentional misconduct of CONSULTANT's officers, directors, contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees, or caused by or arising from any act of negligent omission of CONSULTANT or CONSULTANT's officers, directors, contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees, including violation of any federal, state, or local law, statute, ordinance, rule, or regulation. CONSULTANT shall further indemnify the CITY against any claim that any product purchased or licensed by the CITY from CONSULTANT under this Agreement infringes a United States patent, trademark, or copyright, provided the CITY give CONSULTANT written notice of any such claim not more than ten (10) days from the date the CITY knew or should have known of the claim. The parties shall cooperate fully with each other in the defense of such claim. CONSULTANT recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the CITY in support of these indemnification and hold harmless contractual obligations in accordance with the laws of the State of Florida. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve CONSULTANT of its liability and obligation to hold harmless and indemnify the CITY as set forth in this paragraph of this AGREEMENT. Such indemnification shall be in addition to any and all other legal remedies available to the CITY and shall not be considered to be the CITY's exclusive remedy.

- ii. In the event that any claim in writing is asserted by a third party which may entitle the CITY to indemnification, the CITY shall give notice thereof to CONSULTANT which notice shall be accompanied by a copy of statement of the claim. Following the notice, CONSULTANT shall have the right, but not the obligation, to participate at its sole expense, in the defense, compromise, or settlement of such claim with counsel of its choice. If CONSULTANT shall fail timely to defend, contest, or otherwise protect against any suit, action, or other proceeding arising from such claim, or in the event the CITY decides to participate in the proceeding or defense, the CITY shall have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONSULTANT, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto shall cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise, or settlement of such claim.
- iii. The indemnification provisions of this paragraph shall survive the termination of this Agreement. Nothing herein shall be construed to extend the CITY's liability beyond that provided in section 768.28, Florida Statutes.

b. **Warranties.**

- i. CONSULTANT warrants that its services are to be performed within the limits prescribed by the CITY consistent with the generally accepted standards and practices of the profession in which CONSULTANT is engaged.
  - ii. CONSULTANT represents and warrants that it has the personnel and experience necessary to perform the services in a professional and workmanlike manner.
  - iii. CONSULTANT represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.
  - iv. CONSULTANT represents and warrants that it will comply with all applicable laws, rules, regulations, and codes, including federal, state, special district, and local.
  - v. CONSULTANT warrants that the data utilized by CONSULTANT (other than as provided by the CITY) is from a source, and collected using methodologies, which are generally recognized in CONSULTANT's industry or profession to be a reliable basis and foundation for CONSULTANT's work product. CONSULTANT shall notify the CITY in writing should it appear, in CONSULTANT's professional judgment, that the data or information provided by the CITY for use in CONSULTANT's work product is incomplete, defective, or unreliable.
  - vi. CONSULTANT guarantees to amend, revise, or correct to the satisfaction of the CITY any error appearing in the work, as a result of CONSULTANT's failure to comply with the warranties and representations contained herein. Neither inspection nor payment, including final payment, by the CITY shall relieve CONSULTANT from its obligations to do and complete the work product in accordance with this Agreement.
- c. **Assignment.** This Agreement is personal, and CONSULTANT shall not assign or delegate any rights or duties hereunder without the specific written consent of the CITY. In the event CONSULTANT requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement or the Work Authorizations contemplated by this Agreement, CONSULTANT shall obtain the written approval of the CITY Project Manager prior to engaging such subcontractor or professional associate.
- d. **Opinions of Cost.** Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor(s)' methods of determining prices, or over competitive bidding or market conditions, any opinions rendered as to probable Project cost and construction cost for any subsequent Project are made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional; however, CONSULTANT cannot and does not guarantee that proposals, bids, or actual Project or construction cost will not vary from opinions of probable cost prepared by CONSULTANT. If, prior to the Bidding Phase, the CITY wishes greater assurances as to Project or construction cost, it shall employ, or authorize CONSULTANT to employ, an independent cost estimator.
- e. **Ownership of Work and Documents.** All work performed by the CONSULTANT pursuant to this Agreement shall be the property of the CITY. The CONSULTANT

hereby conveys, transfers and grants to the CITY all rights of reproduction and the copyright to all such documents.

f. **Confidentiality; Public Records.**

- i. CONSULTANT shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the services performed by CONSULTANT or other information to which CONSULTANT has had access during the Term of this Agreement without the prior written approval of the CITY, during the Term of this Agreement and for a period of two (2) years after the termination of this Agreement.
- ii. CONSULTANT is a "Contractor" as defined by Section 19.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Section 119.0701(2), Florida Statutes, including the following:
  - (1) Keep and maintain public records required by the CITY to perform the service.
  - (2) Upon request from the CITY 's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
  - (3) 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 and following completion of the Agreement if the CONTRACTOR does not transfer the records to the CITY.
  - (4) Upon completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY 's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- iii. "Public records" is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of the physical form, made or received in connection with this Agreement.
- iv. Should CONSULTANT assert any exemptions to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon CONSULTANT.
- v. CONSULTANT consents to the CITY 's enforcement of CONSULTANT's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory

injunction, whereupon CONSULTANT shall pay all court costs and reasonable attorney' s fees incurred by CITY.

- vi. CONSULTANT's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the CITY.
  - vii. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Becky Witte, Deputy City Clerk, (386) 322-3011, bwitte@southdaytona.org, 1672 S. Ridgewood Ave., South Daytona, FL 32119.
- g. **Audit.** CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this paragraph for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.
- h. **Covenants by the CITY.** The CITY hereby covenants and agrees:
- i. To promptly pay the fees to CONSULTANT in the amounts and at the times specified herein subject to bona fide dispute as to the work performed or fee charged.
  - ii. To appoint a Project Manager in connection with each Work Authorization executed under this Agreement. Such Project Managers shall have authority to transmit instructions, receive information, interpret and define the CITY 's policy, make decisions pertinent to authorized Projects, and sign off on invoices for interim payments to CONSULTANT.
- i. **Independent Contractor.**
- i. It is specifically agreed that CONSULTANT is deemed to be an independent contractor and not a servant, employee, joint adventurer, or partner of the CITY. It is further agreed that no agent, employee, or servant of CONSULTANT shall be deemed to be the agent, employee, or servant of the CITY. None of the benefits, if any, provided by the CITY to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the CITY to the employees, agents, or servants of CONSULTANT. CONSULTANT will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONSULTANT is an independent contractor, the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY 's general right of inspection to secure the satisfactory completion thereof. CONSULTANT agrees to comply with all Federal, State, and municipal laws, rules and regulations that are now or may in the future become applicable to CONSULTANT, CONSULTANT's

business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The CITY will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONSULTANT.

- ii. CONSULTANT shall bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
  - iii. CONSULTANT agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons it employs in the performance of this Agreement.
- j. **Tax Identification Information.** CONSULTANT acknowledges that CITY will collect CONSULTANT's tax identification number for one or more purposes, including: reconciliation of accounts, verification of identity, verification of credit worthiness, background checks, billing or payment requirements of third parties, government reporting requirements, and bank requirements, and CONSULTANT consents to such use.
- k. **Quantity of Work.** CONSULTANT acknowledges that no representation, commitment, or guarantee, express or implied, is made by the CITY as to the minimum or maximum amount of work which will result from this Agreement.

5. **Miscellaneous Provisions.**

- a. **Discrimination.** CONSULTANT shall assure that no person shall be excluded, on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement. CONSULTANT shall take all measures necessary to effectuate these assurances.
- b. **Severability.** Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that this Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- c. **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONSULTANT recognizes that any representations, statements or negotiations made by the City staff do not suffice to legally bind the CITY in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized City representatives.
- d. **Construction.** Should any provision of this Agreement be subject to judicial interpretation, it is agreed that the court interpreting or considering such provision will not apply the

presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared the same, as all parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, and/or the negotiation of specific language, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

- e. **Attorney's Fees.** In the event of any litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs which are directly attributed to such litigation both at the trial and appellate levels.
- f. **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONSULTANT's work product, services, or materials shall not be construed to operate as a waiver of any of the CITY's rights under this Agreement, or of any cause of action the CITY may have arising out of the performance of this Agreement.
- g. **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision shall not apply if the "Scope of Work" of this Agreement specifies that performance by CONSULTANT is specifically required during the occurrence of any of the events herein mentioned.
- h. **Headings.** All headings are for clarification only and are not to be used in any judicial construction of this Agreement or any paragraph.
- i. **Binding Nature of Agreement.** This Agreement shall be binding upon the successors and assigns of the parties hereto.
- j. **Law; Venue.** This Master Agreement is being executed in Volusia County, Florida and shall be governed in accordance with the laws of the State of Florida. Volusia County, Florida, shall be the venue of any action thereon.
- k. **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the CITY, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the CITY to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the CITY. The CITY will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the faithful performance of the work is furnished in a manner and form satisfactory to the CITY.

- l. **Federal or State Funding.** If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this sub-paragraph shall apply, provisions elsewhere in this Agreement to the contrary notwithstanding. CONTRACTOR shall make inquiry from the CITY's Project Manager to determine whether Federal or State funding is applicable to this Agreement.
  
- m. **E-Verify Compliance.** CONTRACTOR affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., CONTRACTOR is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, CONTRACTOR requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that CONTRACTOR is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.
  
- n. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with City for goods or services of any amount may be terminated at the option of City if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

- o. **Inspections.** CONTRACTOR shall permit, and require its subcontractors to permit, the CITY's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and records, to audit the books, records, and accounts pertaining to the financing and development of the Services described in the Contract Documents.
- p. **Auditor General Cooperation.** CONTRACTOR shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes

**IN WITNESS WHEREOF**, the parties hereto have signed and sealed this Agreement effective the date first written above.

**CITY OF SOUTH DAYTONA**

\_\_\_\_\_  
William C. Hall, Mayor

ATTEST:

(Seal)

\_\_\_\_\_  
James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Wade Vose, City Attorney

**CONTRACTOR**

**(INSERT CONTRACTOR COMPANY NAME)**

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

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

**Exhibit "A"**  
**Fee and Rate Schedule**

**Exhibit "B"**

**WORK AUTHORIZATION**

Pursuant to that certain Master Agreement and Continuing Contract for Professional Services effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (hereinafter the "Agreement") by and between the CITY OF SOUTH DAYTONA, a municipal corporation duly incorporated pursuant to the laws of the State of Florida (hereinafter the "CITY") and \_\_\_\_\_ (hereinafter "CONSULTANT"), the parties agree as follows:

1. Scope of Services: CONSULTANT shall be responsible for providing and shall provide the services described in the Scope of Services, which is set forth in the Scope of Services in the Agreement. Any conflict between the terms and conditions in the Agreement and the terms and conditions set forth in this WORK AUTHORIZATION shall be resolved in favor of the body of the Agreement.

2. Payment: In consideration of the performance of the Scope of Services, the City agrees to pay CONSULTANT for all work actually performed, at the rate or basis described in **Exhibit "A"** to the Agreement, but in no event shall the Payment exceed \$ \_\_\_\_\_. **[\*\*OR\*\* ... the CITY agrees to pay CONSULTANT for all work actually performed, a lump sum of \$ \_\_\_\_\_.]** The CITY reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONSULTANT's obligations. The CONSULTANT shall, without additional compensation, correct and revise any errors, omissions or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONSULTANT.

3. Time for Completion: CONSULTANT will supply the Scope of Services within \_\_\_\_\_ (\_\_\_\_\_) days/months from receipt of this WORK AUTHORIZATION. **[\*\*OR\*\* ...in accordance with the Schedule which is attached hereto as Exhibit "\_\_\_".]**

4. Project Manager: The COUNTY's Project Manager for this WORK AUTHORIZATION is \_\_\_\_\_, City \_\_\_\_\_ or his/her designee. CONSULTANT's Project Manager for this WORK AUTHORIZATION is \_\_\_\_\_.

5. Master Agreement: This WORK AUTHORIZATION shall be subject to the terms, conditions, and provisions of the Agreement.

6. Other: \_\_\_\_\_.

(Remainder of page intentionally blank)