

**PROFESSIONAL SERVICES CONTRACT
CONTRACT NO. 19354**

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach (the "CITY"), and TLC Engineering for Architecture, Inc., a Florida profit corporation ("CONSULTANT").

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

Section 1. Scope of Services. CONSULTANT will provide professional CITY ISLAND REC HALL PROFESSIONAL STRUCTURAL ENGINEERING BUILDING & CONSTRUCTION COST ASSESSMENT SERVICES to the CITY as further described in Exhibit A, attached hereto and incorporated herein by reference. Exhibit A includes deadlines for tasks and if applicable, sub-tasks, and lists any deliverables required.

Section 2. *Reserved.*

Section 3. Fees and Other Payments; Limitations.

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

(b) The CITY will pay CONSULTANT a Fixed Fee of \$16,949.34. Exhibit B, attached hereto, includes an agreed-upon estimate of the time needed by CONSULTANT to complete the work, including hourly rates. This estimate is provided solely to allow the CITY to determine that the Fixed Fee is reasonable.

(c) Payment for expenses such as reimbursables will only be made if expressly provided for in Exhibit B, and will be capped at \$180.00. In addition:

(1) If Exhibit B specifically provides for reimbursement of travel-related expenses per diem, mileage will be paid in accordance with then-current IRS business related mileage rate and in such cases, only for travel in excess of 50 miles round trip.

(2) If Exhibit B specifically provide for reimbursement of CONSULTANT's cost of using one or more subconsultants, such costs will be paid at the rates set forth in the Exhibits, and CONSULTANT certifies that such rates do not include a mark-up for the benefit of CONSULTANT.

(d) Except for any expenses specifically provided for in Exhibit B, CONSULTANT will be solely responsible for all of costs CONSULTANT incurs in meeting its obligations herein.

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

(a) No payment will be due for services performed until CONSULTANT submits a proper invoice. CONSULTANT may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the date of the purchase order.

(b) As to the Fixed Fee, the CITY will pay based on the percentage of work completed and accepted.

(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 subconsultants or air travel), the invoice must include proof that CONSULTANT has paid such costs.

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

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

Section 6. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONSULTANT. CONSULTANT 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, CONSULTANT will be solely responsible for payment of all federal, state, and local income tax, and self-employment taxes, arising from this Contract; and CONSULTANT 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. CONSULTANT will also be responsible for the performance of CONSULTANT's sub-consultants.

Section 7. Documents.

(a) All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONSULTANT during the term of and in accordance with the provisions of this Contract are the property of the CITY. CONSULTANT will immediately deliver all such materials to the CITY upon demand or upon completion of the particular task for which such materials were prepared, executed, or otherwise required; or, where no demand has been made at the time that this Contract expires or is terminated, upon such expiration or termination.

(b) CONSULTANT understands and agrees that CITY will have the right to reuse any plans and specifications, including construction drawings, that CONSULTANT 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, CONSULTANT 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 CONSULTANT fails to transfer such records to the CITY if CONSULTANT does not 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. CONSULTANT 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 CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE

CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONSULTANT MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

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

(b) Nothing herein will be deemed to waive CONSULTANT'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 last signature date set forth below (the "Effective Date"). This Contract will begin on the Effective Date and end when the work is completed, unless terminated sooner pursuant to the provisions below.

Section 10. Termination of Contract.

(a) The CITY may terminate this Contract, in whole or in part, at any time, for the CITY's convenience or upon CONSULTANT's material breach, by providing written notice as follows:

(1) Before terminating for convenience, the CITY must provide CONSULTANT 30 days' notice. Termination will be automatic upon the expiration of the 30-day period.

(2) Before terminating due to CONSULTANT's material breach of its contractual obligations, CITY must provide CONSULTANT prior written notice, specifying the breach and demanding that CONSULTANT remedy the breach within 10 days of the notice. This Contract will terminate automatically and without need for additional notice if CONSULTANT fails to remedy the material breach within this 10 day period.

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

(b) If the termination is for the CITY's convenience, CONSULTANT will be paid compensation for services performed to the date of termination.

(c) If the termination is due to the CONSULTANT's material breach, the CITY reserves all rights and remedies it may have under law due to such breach.

(d) If after notice of termination for the CONSULTANT's material breach it is determined by the CITY or by a court of law that the CONSULTANT had not materially breached this Contract, or that the CITY's notice for termination upon such breach was insufficient, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONSULTANT will be made as provided in Subsection (b) of this Section.

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

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

Section 12. Indemnification. CONSULTANT 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 CONSULTANT's negligent acts or omissions, or reckless or intentionally wrongful conduct in the performance of this Contract. For purposes of this Section, the term, "CONSULTANT," includes CONSULTANT's officers, employees, and agents, including subconsultants and other persons employed or used by CONSULTANT. This indemnification is in no way limited by any insurance provided by CONSULTANT.

Section 13. Insurance. CONSULTANT will provide and maintain at CONSULTANT's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) Coverage and Amounts.

(1) Workers Compensation Insurance if required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONSULTANT, 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.

(2) Liability Insurance, including **(i) Commercial General Liability coverage** for operations, independent CONSULTANTS, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONSULTANT 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 CONSULTANT 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 that is at least as broad as ISO form CG 20 10 11 85.

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) Professional Liability Insurance, insuring CONSULTANT and other interests, including, but not limited to, any associated or subsidiary companies involved in the work, for errors or omissions in the performance of professional services to be rendered pursuant to this Contract. The limit

of liability will be no less than \$1,000,000.

Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date no later than the Effective Date and with a two year reporting tail beyond the annual expiration date of the policy.

(b) Unless specifically waived hereafter in writing by the Risk Manager, Contractor agrees that the insurer shall waive its rights of subrogation, if any, against the City on each of the above listed insurance coverages.

(c) **Proof of Insurance.** CONSULTANT will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONSULTANT will not commence work until proof of all required insurance has been filed with and approved by the CITY. CONSULTANT will furnish such proof 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, CONSULTANT 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.

(d) **Cancellation; Replacement Required.** CONSULTANT 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 CONSULTANT's prior knowledge CONSULTANT 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 CONSULTANT'S expense if CONSULTANT fails to do so.

(e) **Termination of Insurance.** CONSULTANT may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONSULTANT has received written notification from the Risk Management Division of the CITY that CONSULTANT 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 CONSULTANT if the request is made no earlier than two weeks before the work is to be completed.

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

CONSULTANT 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 CONSULTANT that does not meet the requirements of this Contract.

Section 14. Notices. 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, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the Parties' addresses. The Parties' contact information is as follows:

If to the CITY

Andrew Holmes, Public Works Director
Daytona Beach Public Works
950 Bellevue Ave.
Daytona Beach, FL 32114

If to the CONSULTANT:

GARY KRUEGER PRINCIPAL /VP
TLC ENGINEERING SOLUTIONS
874 DIXON BLVD
COCOA FL 32922

Either Party may change the name or address for receipt of that Party's notices, by providing the other Party written notice in the manner described above.

Section 15. Personnel. CONSULTANT represents that CONSULTANT has or will secure at CONSULTANT'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.

The CITY will have the right to approve or reject any subconsultants that CONSULTANT proposes to use for work assigned.

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

Section 17. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONSULTANT, will be construed to operate as a waiver of the CITY's rights under this Contract. CONSULTANT 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 CONSULTANT's negligent or wrongful provision of any of the services furnished under this Contract.

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

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

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

(b) Non-Binding Mediation. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the Subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend 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 19. General Terms and Conditions.

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

(b) Assignments and Subcontracting. CITY has hired CONSULTANT to personally perform the services provided herein on the basis of CONSULTANT's personal skills, and CONSULTANT's unique experience with and knowledge of the Project. Therefore, CONSULTANT will not assign or subcontract without the CITY's written approval, which may be withheld for any reason.

(c) Compliance with Laws and Regulations. In providing all services pursuant to this Contract, CONSULTANT 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 CONSULTANT.

(d) Truth in Negotiations Certificate. CONSULTANT 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 CONSULTANT'S services under this Contract.

(f) Contingency Fee. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(g) Nondiscrimination. CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONSULTANT 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, CONSULTANT 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, CONSULTANT agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

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

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

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

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

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

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

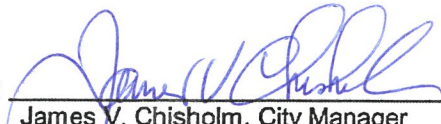
(n) **Incorporation of RFP and Proposal.** The CITY's Request for Proposals 19354, and the CONSULTANT'S responsive proposal are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available 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.

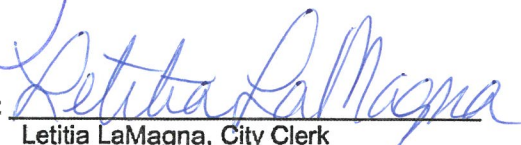
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(o) **Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth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

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

THE CITY

By: 
James V. Chisholm, City Manager


Attest: 
Letitia LaMagna, City Clerk

Date: 5-9-19

Approved as to legal form:

By: 
Robert Jagger, City Attorney

CONSULTANT

By: 
Signature

Name Typed: GARY K. KUEHN

Date: 4/23/19

Exhibit A: Scope of Services

Revised: April 9, 2019

Revised: April 8, 2019

April 2, 2019

As requested, TLC Engineering has developed the following **revised** proposal to provide engineering and architectural consulting services for the referenced facility.

Proposed work scope is based on joint Consultant/City meeting of March 25, 2019, the project RFQ dated January 30, 2019 developed for the referenced facility, and Cliff Palmer's email of April 5, 2019. Proposed scope includes an evaluation of the existing facility to assess requirements to renovate to meet current building code criteria and remediate existing conditions.

Proposed work scope to include the following:

1. Site visit to visually observe the general current condition of the facility, relative to identifying potential repairs, and the potential need for maintenance, repairs, upgrade, or replacement. Specific elements to include architectural, structural, HVAC, electrical and plumbing considerations. More specifically, scope is expected to include:
 - a. Assessing the structural condition of the building.
 - b. Identifying building components requiring renovation, replacement, or reconstruction to restore structure to a suitable venue for its intended use.
 - c. Providing a full construction cost estimate for remediation of all structural deficiencies including code non-compliance.
 - d. Visually assessing the leaking roof and the structural members affected.
 - e. Determine any structural and/or foundation deficiencies needing replacement or repair, based on a visual inspection and observation of any settlement issues.
 - f. Report on the amount of termite damage to the interior and exterior structural wooden frame based on visual evaluation.
 - g. Assess the building's electrical, mechanical, plumbing, HVAC and fire protection requirements needed to satisfy CODB, state and federal codes.
 - h. Determine all ADA upgrades required for restrooms, entryways, outdoor covered areas, parking lot, and sidewalks.
 - i. Assess the condition of the existing wood flooring and support system and determine need for repair or removal and replacement.
 - j. Develop pre-design structural alternatives analysis to determine structural and financial feasibility of totally new construction versus repair/renovation.

- k. Visual inspection of existing deteriorated structural elements and preparation of a narrative to describe designs and specifications for appropriate repairs and/or replacements.
 - l. Determine presence of mold, asbestos and lead based paint, based on visual inspection and review of previous reports provided by the city.
 - m. Provide a full construction rough order of magnitude (ROM) cost estimate for remediation of all structural deficiencies including code non-compliance and mitigation of all environmental threats, i.e., mold, asbestos, and lead based paint.
2. Deliverables to include draft and final reports outlining:
- a. Executive Summary.
 - b. Comprehensive narrative descriptions of existing conditions and findings as well as recommendations for required repairs or maintenance. Report will also include any limitations and/or recommendations for additional invasive testing or investigation.
 - c. Photographs, sketches, or related documentation to communicate report findings.
 - d. Rough order of magnitude cost estimates for expected remediation for both:
 - Assessment and ROM costs to bring building back to its original functionality (including parking).
 - Assessment and ROM costs to restore original functionality as well as incorporation of current code criteria (if feasible).
 - e. Comparison of projected ROM repair/remediation costs and alternative option for new construction on a different site, complying with current code criteria.
3. TLC will also serve as prime author of the comprehensive report incorporating independent input from KMF Architects who will address architectural consideration including life safety, ADA and building envelope.
4. Proposed scope includes one meeting with your team to review/coordinate our reports and one meeting with City officials to present and review findings and recommendations.

TLC evaluation will also directly incorporate the following information provided by the city:

- 1. Previous repair estimates prepared by United Water Restoration Group dated July, 6, 2018.
- 2. Asbestos abatement proposal, dated July 16, 2018 prepared by A&L Remediation Services.

3. City of Daytona Public Works site plan and associated scope of work for demolition of the facility.
4. Lead based paint survey prepared by Universal Engineering dated March 30, 2018.
5. Pre-Demolition Limited Asbestos survey prepared by Universal Engineering, dated March 28, 2018 (revised April 6, 2018).
6. Sergon Building Consultants repair estimate including photographs of existing conditions dated February 26, 2018.
7. Project Group Hurricane damage evaluation dated October 3, 2018.
8. HVAC design drawing prepared by L.J. Taylor, PE dated June 28, 1982.
9. Restroom modification drawing prepared by J.M. Wachtel, PE dated September 10, 1996.
10. City Island Recreation Center Building evaluation- 2018 update prepared by City Facilities and Property Management Group reflecting updates from 2017 report.
11. Twelve months of previous facility power bills.

To complete our services, TLC will require:

1. Contact information to arrange access to the site.
2. Any additional available existing construction drawings, or previous reports.
3. Any additional maintenance and/or repair records.

PROPOSED SCHEDULE

TLC's proposed schedule following receipt of formal authorization and NTP:

- **Draft Report: 4 weeks**
- **Final Report: 2 weeks**

The following items are not a part of this assignment and hence not included in the proposed scope of services:

1. Concealed or inaccessible areas of the property requiring the use of destructive investigation beyond that proposed in the Scope of Services. All field observations to be based on visual inspection of accessible, ground level components. High lift access is not anticipated or included.
2. Environmental or infra-red assessment/investigation of the subject property, including mold sampling and/or subsurface investigations.
3. Any portion of the property that TLC determines to be unsafe (should an area of particular concern be identified, it shall be so noted in the report(s) with a recommendation for further study).
4. Insect evaluation beyond visual observation of damage.

April 2, 2019

Mr. Gary Kreuger
TLC Engineering Solutions
Vice President/Executive Director
874 Dixon Boulevard
Cocoa, Florida 32922

Subject: Building & Construction Cost Assessment – Community Center, Daytona Beach, Florida

Dear Gary,

KMF Architects (herein referred to as “KMF”), is pleased to present this fee proposal for architectural observation and reporting services to TLC Engineering Solutions (herein referred to as the “Client”). The following is our understanding of the scope of work and fees required:

I. GENERAL

This letter order shall serve as a general agreement for professional services subject to all applicable laws and regulations of the jurisdictions in the State of Florida.

II. SCOPE OF WORK

This proposal is to provide a professional opinion regarding the building condition and its suitability for full code compliant reuse of the facility including accessibility, surrounding walls and access and parking. The building has a history of leaks possibly caused by age, by design or faulty construction or repairs and severe wind events. The base scope includes the evaluation and reporting of visible defects which are further defined herein. Client will hold the prime contract for this project, serving as the main point of contact with the Owner and all additional Consultants required to perform the work. TLC and will provide overall project coordination, project management, quality assurance.

III. PROFESSIONAL SERVICES

A. Phase 1 Evaluation Services:

1. KMF will review all available construction drawings, specs, and documents identifying project problem claims by the Owner. KMF will require full disclosure of all available documents including any legal documents that identify problem areas. KMF will request a letter from the City indicating that a full disclosure of information has been made to KMF and that KMF may rely upon the information provided in preparation of the evaluation report.
2. After reviewing the information provided in item 1, KMF will go to the site and perform a physical evaluation of the building envelope. City shall provide a step ladder required for review of the roof

truss area. All observations made onsite will be visual based without any destructive testing. If it is determined that additional destructive testing is warranted then KMF will notify the Client and wait for further instruction.

3. KMF, as part of its field evaluations, KMF shall identify any readily known code compliance issues, including accessibility and life safety issues, observed.
4. After completing items 1-3 above, KMF will meet with the Client via conference call to review observations found in the documents provided by the Client, or found in the field.
5. Based upon direction given in Item 4, KMF shall prepare the final report of visual observations for the building, the immediate site and provide a rough order of magnitude estimate, (ROM) based upon our professional experience.

B. Exclusions from the Scope of Services

1. Meetings and site visits beyond those indicated.
2. Detailed cost estimates and/or budget analysis.
3. Structural, Mechanical, Electrical, Plumbing, Fire Protection and Security System evaluations.
4. Civil / Geotechnical evaluation including (slopes, soils permeability, etc.).
5. Hazardous material discovery, abatement removal or site remediation.
6. Discovery of termites or other invasive insects or rodents.
7. Any services not specifically noted in this contract.

C. Assumptions and Limitations

1. See Exclusions.
2. Review of drawings: The Client and Owner is responsible for providing the documents available for review as identified in this proposal.
3. KMF shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at any Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCF), or other toxic substances.
4. You waive any claim against KMF and agree to indemnify, defend and hold KMF harmless from any claim or liability for injury or loss arising from encountering unanticipated hazardous materials. Hazardous materials include any materials that are known or suspected to jeopardize human health or safety, through exposure of any kind. Such materials shall include but not be limited to those listed in various Federal, state and local laws and regulations.
5. KMF will perform services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the professional currently practicing in the same locality under similar conditions. No other representation is expressed or implied, and no warranty is included in this Agreement or in any report, opinion, document, or is otherwise intended.
6. KMF's services shall be performed as expeditiously as possible in a manner that is consistent with generally accepted professional skill and care and the orderly progress of the work. KMF shall not be responsible for damages or delays caused by any factor outside of KMF's control.


7. Prompt notice via email shall be given by the Client to KMF if you become aware of any actual or potential discrepancy, fault, or defect in the services provided.
8. KMF has not been retained or compensated to provide design documents related to this report nor any future work that may arise out of this Work.

V. COMPENSATION

- A. KMF's fee shall be lump sum of \$ 8,000.00
- B. Deliverable: Report in PDF format and Word if requested.
- C. Terms
 1. KMF will need the following items in order to proceed with its work:
 - a. Signed agreement/authorization to proceed.
 - b. Documents requested in Phase 1-A beyond documents already provided.
 2. KMF will invoice Client for the above services every four (4) weeks for the amounts due for professional services rendered and expenses incurred and payment will be due thirty (30) days from receipt of invoice.
 3. This Agreement represents the entire and integrated Agreement between Client and KMF and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Client and KMF.
 4. If any provision of this Agreement is held invalid by a court of competent jurisdiction, it shall be considered deleted from the Agreement, but such invalidity shall not affect other provisions that can be given effect without the invalid provisions.
 5. TERMINATION: This Agreement may be terminated by either party upon seven (7) calendar days' written notice. In the event of termination, KMF shall be paid by Client for all services performed to the date of termination. All documents on Client's behalf shall remain the property of KMF. A copy of the Report PDF format will be furnished to you at no additional cost.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the day and year first written above.

Sincerely,
KMF Architects


Joseph H. Morgan
President

TLC Engineering Solutions

Gary C. Kreuger, PE, CM, LEED AP BD+C
Vice President/Executive Director

I. PROJECT: City Of Daytona City Island recreation Center AssessmentII. SCOPE OF WORK:

The project includes the evaluation of an existing recreation building.

III. WORK ORDER COMPENSATION/SCHEDULEFEE PROPOSAL

The statement of fees under this Service Agreement shall be based on the Standard Hourly Rate Schedule for the following work phases:

FIELD SURVEY/Research

POSITION	HOURLY RATE	HOURS	TOTAL
Principal/Director	\$205.81	2	\$411.62
Project Manager	\$148.65	4	\$594.60
Senior Engineer	\$205.81	0	\$0.00
Engineer 2	\$120.27	16	\$1,924.32
Engineer 1	\$98.01	0	\$0.00
Designer 2	\$121.88	0	\$0.00
Designer 1	\$81.10	0	\$0.00
Technician	\$60.96	0	\$0.00
Admin/Word Processing	\$71.26	4	\$285.04
SUBTOTAL			\$3,215.58

Draft Report

POSITION	HOURLY RATE	HOURS	TOTAL
Principal/Director	\$205.81	0	\$0.00
Project Manager	\$148.65	2	\$297.30
Senior Engineer	\$205.81	3	\$617.43
Engineer 2	\$120.27	16	\$1,924.32
Engineer 1	\$98.01	0	\$0.00
Designer 2	\$121.88	0	\$0.00
Designer 1	\$81.10	0	\$0.00
Technician	\$60.96	4	\$243.84
Admin/Word Processing	\$71.26	8	\$570.08
SUBTOTAL			\$3,652.97

Final Report

POSITION	HOURLY RATE	HOURS	TOTAL
Principal/Director	\$205.81	0	\$0.00
Project Manager	\$148.65	2	\$297.30
Senior Engineer	\$205.81	3	\$617.43
Engineer 2	\$120.27	6	\$721.62
Engineer 1	\$98.01	0	\$0.00
Designer 2	\$121.88	0	\$0.00
Designer 1	\$81.10	0	\$0.00
Technician	\$60.96	2	\$121.92
Admin/Word Processing	\$71.26	2	\$142.52
SUBTOTAL			\$1,900.79

TOTAL FEE PROPOSAL AMOUNT

\$8,769.34

KMF consultant - architectural services.

\$ 8,000.00

	\$16,769.34
expenses	\$ 180.00
grand total	\$16,949.34

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