



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

Post Office Box 2451
Daytona Beach, Florida 32115-2451

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

**REQUEST FOR PROPOSALS
INVITATION**

NOTICE IS HEREBY GIVEN that sealed proposals will be received in the office of the Purchasing Agent, Daytona Beach City Hall, Room 146, 301 South Ridgewood Avenue, Daytona Beach, Florida 32114, until **May 8, 2019 at 2:00 PM**, at which time they will be publicly opened for the following:

TRANSPORTATION PLANNING CONTINUING PROFESSIONAL SERVICES

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

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

SCOPE OF WORK: Transportation Planning support including GIS database and system administration; roadway characteristics inventory; preparation of various mapping and graphics tasks for presentation or reports; Traffic Impact Analysis; multi-modal study or transportation alternative studies; review or preparation of applicable ordinances, DRIs, and FQDs, transportation concurrency assessment, CPAs, and EARs; support city staff with grant applications related to the TPO or other granting agencies; corridor analyses; public involvement; access management support; traffic signal warrant and traffic calming studies; provide recommendations for functional classification of roadways; update and maintain the city's vested trip tracker, review and prepare proportionate Fair Share Agreements.

A NON-MANDATORY PRE-PROPOSAL CONFERENCE will be held at the Daytona Beach City Hall, 301 S. Ridgewood Ave., Room 149B, Daytona Beach, Florida 32114, on Thursday, May 2, 2019 at 3:00 P.M. Interested Proposers are *urged* to attend.

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

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

PROPOSAL FOR: **TRANSPORTATION PLANNING CONTINUING PROFESSIONAL SERVICES**
PROPOSAL NO: **19255**

**THE CITY OF DAYTONA BEACH
BY: JOANNE FLICK, CPPO, CPPB
PURCHASING AGENT
ISSUED: April 17, 2019**

**THE CITY OF DAYTONA BEACH
REQUEST FOR PROPOSALS
TRANSPORTATION PLANNING CONTINUING PROFESSIONAL SERVICES
No. 19255**

GENERAL CONDITIONS

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

GENERAL CONDITIONS

1. **INSTRUCTIONS TO PROPOSERS:** To insure consideration of your Proposal, please follow these instructions. One original and five (5) copies of all Proposal sheets must be executed and returned, unless otherwise directed. **Provide one pdf copy of the Proposal in its entirety on cd, dvd, or other electronic media.** All Proposals not in compliance with the conditions specified herein are subject to rejection.

2. **PROPOSAL ENVELOPE:** All Proposals must be returned in a sealed box or envelope addressed to the City of Daytona Beach and should contain on the outside the following information:
 - a. Name and address of Proposer
 - b. Proposal Number 19255
 - c. Date and time of Proposal opening

PLEASE NOTE: The address of the Purchasing Division is:

Daytona Beach City Hall
301 South Ridgewood Avenue
Room 146
Daytona Beach, FL 32114

3. **REQUESTS FOR INTERPRETATIONS.** If the Proposer is in doubt as to the meaning of any of the RFP Documents or other Contract Documents included in this solicitation, the Proposer may submit a written request to the City for an interpretation, care of the Purchasing Agent at the address set forth in the Invitation for delivery of the completed Proposal. Such requests must be received 10 days

prior to Proposal opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation issued by the City in the form of a written addendum will be deemed to be a part of the Proposal Documents.

No oral clarification or interpretation will be binding.

4. **EXECUTION OF PROPOSAL**: The Proposal must contain a manual signature of an individual or of an authorized representative of the firm making the Proposal, in the space provided on the Proposal Form, if provided as a part of the Proposal package, or on Proposer's own form, if a specific Proposal form is not provided. The Proposer's name shall be inserted on all sheets requiring the Proposer's name. In order to insure uniformity, Proposals must be submitted on the Proposal Form, if provided, and on the attached pages.
5. **PROPOSAL OPENING - LATE PROPOSALS**: Proposals will be opened publicly, the name of the Proposers read aloud and recorded, on the date and time indicated, at the location specified in this Request for Proposals. It is the Proposers' responsibility to make certain that his/her Proposal is in the hands of the Purchasing Agent prior to the opening time at the specified location. Any Proposal received thereafter will be rejected and returned to the Proposer.
6. **WITHDRAWAL OF PROPOSALS**: Proposals may be amended or withdrawn only by written notice prior to the Proposal opening. Proposal amendments must be submitted in a sealed envelope. Amendments or withdrawals received after the Proposal opening will not be effective, and the original Proposal submitted will be considered.
7. **CONSIDERATION OF PROPOSALS**: Telephonic, electronic, or faxed Proposals will not be considered. The Proposer agrees that his/her Proposal will not be withdrawn within sixty (60) calendar days following opening of the Proposals, and that during such time his Proposal will remain firm and irrevocable. The City reserves the right to reject any or all Proposals, and to waive any technical defects in Proposals.
8. **COOPERATIVE PURCHASING**: All proposers awarded contracts from this RFP are required to permit governmental entities in Volusia County to participate in the contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs. At the option of the awarded proposer, the use of the contract resulting from this solicitation may be extended to other governmental agencies, cities, counties, and political subdivisions.
9. **GENERAL REVIEW PROCEDURES**: The Purchasing Code, Chapter 30, Code of the City of Daytona Beach, sets forth the general review procedures for competitive sealed proposals. Under the Purchasing Code, the City Manager is required to evaluate and rank responsive Proposals in accordance with the criteria

identified in the RFP. Before submitting a recommendation for final action on this RFP to the City Commission, the City Manager is authorized to “shortlist” and negotiate with one or more of the Proposers who submitted the highest ranked Proposals. As part of these negotiations, the City Manager may request revised Proposals from shortlisted Proposers.

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

10. **LOCAL PREFERENCE:** Pursuant to the Purchasing Code, preferences may be given in the evaluation of responsive Proposals to Local Vendors. A “Local Vendor” is a vendor which has maintained a permanent place of business with full-time employees within the city limits of the City of Daytona Beach for a minimum of six months prior to the date Proposals were received for the contract at issue, which generally provides from such permanent place of business the kinds of services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

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

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

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

Paragraph 8, above, from requiring a short listed Proposer to submit a revised Proposal.

11. **AWARD**: The award will be made by the City to the firm most qualified and offering the best value to the City, which will be determined by evaluation of Proposals using the evaluation criteria contained in the RFP, and in accordance with applicable rules and regulations governing the purchase and contract adopted and established by the City, and the State of Florida.

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

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

16. **PERFORMANCE**: During the performance of the contract, the Proposer agrees as follows:
- a. The Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin.
 - b. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section.
17. **FLORIDA PUBLIC RECORDS LAW**: Sealed proposals received by the City pursuant to the Request for Proposals will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all Proposals will be open for a personal inspection by any person pursuant to Public Records Law.
- If the Proposer believes that the Proposal or any portion thereof is permanently exempt from disclosure under the public records laws, the Proposer must state the grounds for this position in CAPITAL LETTERS on the cover sheet accompanying the sealed Proposal. The Proposer will be contacted prior to the opening of the Proposal and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Proposer may in writing request the return of the sealed Proposal.
18. **EVALUATION CRITERIA**: The following weighted evaluation criteria will be used to evaluate Proposals and develop a recommendation to the City Manager as described in Section 8, above. Each criterion will be scored between 1 and 5; 1=poor, 2=below average, 3=average, 4=above average, 5=excellent. Scores will be multiplied by the criterion weight for a weighted score; weighted scores will be totaled for the weighted total score.

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CRITERIA	WEIGHT
Criterion 1 – Qualifications and Staffing <ul style="list-style-type: none"> ○ Provide resumes of key personnel demonstrating the qualifications, experience, involvement on assignments, and knowledge of the subject and its complexity ○ Include an organizational chart demonstrating reporting hierarchy and any sub-consultants anticipated to be utilized in the performance of the contract. 	35
Criterion 2 – Hourly Rates of Project Manager and Key Personnel <ul style="list-style-type: none"> ○ Provide hourly rates for Project Manager and all Key Personnel anticipated to be utilized in the performance of the Contract 	15
Criterion 3 – Approach to the Scope of Work <ul style="list-style-type: none"> ○ Describe the Proposer’s approach to the tasks included in the Scope of Work, with emphasis on scheduling and meeting budget requirements, and with a focus on the City of Daytona Beach’s transportation planning needs.. 	20
Criterion 4 – Past Performance <ul style="list-style-type: none"> ○ Provide 5 projects similar in scope and nature, completed within 10 years of the due date of the RFP, which demonstrate the Proposer’s transportation planning performance and experience. Include reference contract information to verify performance and ability to meet schedule and budget requirements 	30

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

20. **REJECTION OF PROPOSALS**: The City reserves the right to reject any or all Proposals in whole or in part and to award by items, parts of items, or by any aggregate group of items specified. The City also reserves the right to waive technical defect when in its judgment the best interests of the City thereby will be served.

21. **QUALIFYING PROPOSERS**: Prior to awarding of Proposal, the City may require submission by Proposer of complete financial statement and questionnaire describing Proposer’s financial ability and experience in performance of similar work.

22. **RULES AND REGULATIONS:** All work performed under this agreement shall be in strict compliance with local, State and Federal laws, rules and regulations. Proposer shall assume all liability for fines and penalties assessed by the authorities for any infractions.
23. **MINORITY AND WOMEN WORK FORCE PARTICIPATION:** The City has an established policy of: 1) promoting Minority and Women-Owned Business Enterprise participation in business contracts and 2) requiring Proposers doing business with the City to use good faith efforts to promote cultural diversity and minority participation in the work force, including managerial positions. Proposers must provide information as part of the Proposal acknowledging its understanding and willingness to comply with the Purchasing Code of The City of Daytona Beach.
24. **NO COSTS:** The City of Daytona Beach bears no responsibility for any costs incurred in the preparation of the Proposal.
25. **DRUG FREE WORKPLACE:** The selected firm must provide the Drug Free Workplace Form in accordance with Florida Statute 287.087, prior to Contract award.
26. **PROHIBITION OF LOBBYING.** Except for negotiations authorized by the City Purchasing Code, the Consultants Competitive Negotiations Act, or other state or federal law, lobbying by the Proposer, or the Proposer's principals, officers, employees, attorneys, or other agents, is strictly prohibited during the Blackout Period. Lobbying in violation of this section may cause the proposal to be rejected.

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

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

27. **SELECTION PROCESS:**

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

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

ANTI-COLLUSION STATEMENT

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

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

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

NAME OF FIRM: _____

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

NAME TYPED: _____ TITLE: _____

ADDRESS: _____

CITY AND STATE: _____

TELEPHONE: _____ EMAIL: _____

DRUG FREE WORKPLACE FORM

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

(Proposer)

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

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

Date: _____

Signature & Title

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

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
(print name of the public entity)
by _____
(print individual's name and title)
for _____
(print name of entity submitting sworn statement)
whose business address is

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, insert the Social Security Number of the individual signing this sworn statement above:

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any Proposal or CONTRACT for goods or services, any lease for real property, or any CONTRACT for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes means:
- (a) A predecessor or successor of a person convicted of a public entity crime, or

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

- (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, will be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months will be considered an affiliate.
5. I understand that a “person” as defined in Paragraph 287.133(l)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding CONTRACT and which bids or applies to Proposal on CONTRACTs for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on Information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (*Indicate which statement applies.*)

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted VENDOR list (*attach a copy of the final order.*)

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

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]

Sworn to and subscribed before me this _____ day of _____, 20____.

Personally known _____

OR Produced Identification _____ (Type of identification)

Notary Public - State of _____

By: _____

My commission expires _____

(Printed typed or stamped
commissioned name of Notary Public)

LOCAL VENDOR AFFIDAVIT

Complete and submit this form ONLY if you qualify for local preference as provided in the City of Daytona Beach Purchasing Code.

A copy of the Proposer's Daytona Beach Business Tax Receipt must be submitted with this Affidavit.

NAME OF PROPOSER: _____

LOCAL BUSINESS ADDRESS *(street address being used to claim Local Preference, including zip code):*

The undersigned certifies under penalty of perjury each of the following:

The Local Business Address has continuously been used as a Permanent Place of Business with at least one full-time employee since _____.

(Insert date)

The Local Business Address has consistently offered or provided the goods or services being solicited by the City of Daytona Beach during the time referenced above.

The Local Business Address has not been established with the sole purpose of obtaining the advantages that may be granted pursuant to the Local Preference provisions of the City of Daytona Beach Purchasing Code.

Signature *(Must be same person as person signing the Proposal)*

Print Name/Title

Subscribed and sworn to before me

This _____ day of _____ 20_____

(Signature of Notary Public)

My commission expires: _____

The City of Daytona Beach reserves authority to require a copy of the corporate charter, corporate income tax filing return, and any other documents(s) to evaluate the Proposer's Local Preference claim.

TRANSPORTATION PLANNING SERVICES

SCOPE OF WORK

The Consultant shall provide services for one or more of the following tasks, and other tasks within the general scope of services described herein.

Transportation Planning Support: The Consultant will develop intersection, corridor, and/or area-level of service analyses and recommendations related to improving existing traffic patterns. If necessary, the Consultant will review the software which will facilitate the conversion or integration of data among various software applications including, but not limited to Synchro, Highway Capacity Software, ITE Trip Generation, NCHRP 684, FSUTMS, and Excel.

- A. Geographic Information System (GIS) Database, and System Administration: The Consultant will develop Geographic Information System (GIS) applications and related databases utilizing the GIS software. The work may include development and/or acquisition of data sets for use with GIS; data transfer interfaces between native data format and the GIS format; data transfer interfaces between other applicable computerized formats and the GIS data format; and development/refinement of software subroutines to perform software integration, data manipulation, mapping, analysis functions through the GIS system. The work may require some system/process design, software expansion/refinements, database updates and integration, and documentation protocols.
- B. Roadway Characteristics Inventory (RCI): The Consultant will review/extract general highway data, using the Florida Department of Transportation RCI system, and enter this information into computer system/records for purposes of conducting the necessary task(s) for this study. The Consultant will assist the City with maintenance of this information on an on-going basis.
- C. Other Support: The Consultant will assist staff in preparing various mapping and graphics tasks for presentation or report purposes using ARC/VIEW, or other graphics software and techniques.
- D. Other Tasks: The Consultant may be required to assist the City performing the tasks itemized below. The Consultant will possess and maintain a thorough working knowledge of the City's roadway characteristics, existing levels of service and capacities, existing and project concurrency shortfalls, and overall concurrency management system.
 - 1. Review or prepare Traffic Impact Analyses;
 - 2. Review or prepare a multi-modal study or transportation alternative study;
 - 3. Review or prepare revisions to the City's Transportation Impact Fee Ordinance;

4. Review or prepare Development or Regional Impact (DRIs) and Florida's Quality Developments (FQDs);
5. Review or prepare Transportation Concurrency Assessment;
6. Review or prepare Comprehensive Plan Amendments (CPAs);
7. Review or prepare Evaluation and Appraisal Reports (EARs) of the Comprehensive Plan, or specific elements thereof;
8. Provide support to staff for tasks and grant applications related to the Transportation Planning Organization or other grant applications;
9. Provide support to staff for tasks and grant applications relating alternative transportation modes, including sidewalks and multi-use trails;
10. Conduct Corridor Analyses related to travel speed, existing and future capacity, levels of service, operating characteristics, etc.
11. Provide Public Involvement services;
12. Provide Access Management Support;
13. Conduct traffic signal warrant studies;
14. Conduct traffic calming studies;
15. Provide traffic count support;
16. Review or prepare queuing calculations;
17. Provide recommendations for Functional Classification of Roadways and Jurisdictional Transfers; and
18. Update and maintain the City's vested trip tracker
19. Review or Prepare Proportionate Fair Share Agreements.

**GENERAL SERVICES TERM CONTRACT
CONTRACT NO. 19225**

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and > _____, a > _____ ("CONSULTANT").

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

Section 1. Scope of Services. CONSULTANT will provide Transportation Planning Continuing Professional Services to the CITY from time to time at the request of the CITY during the Term of this Contract.

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

Section 2. Services Must Be Authorized in Writing. This Contract, in and of itself, does not require the CONSULTANT 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 CONSULTANT; or it may consist of CONSULTANT's written quotation/proposal, identifying the work to be performed and the unit prices for such work, and the CITY's written acceptance of such quotation or proposal. No work authorization may alter the terms and conditions of this Contract. In case of a conflict with a work authorization this Contract will govern. The work authorization may provide more detailed parameters for the services to be provided, such as deliverables, deadlines, etc., consistent with the provisions of this Contract.

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

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

Section 3. Fees and Other Payments; Limitations.

(a) Fee. Each work authorization will set forth the Fee to be paid to CONSULTANT. The Fee will be established as either a not-to-exceed or fixed fee. In

either instance the work authorization will include sufficient documentation to describe the basis on which the fee has been calculated.

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

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

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

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

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

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

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

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

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

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

(4) Sub-consultant expenses will be subject to the same limitations as those that apply to CONSULTANT.

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

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

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

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

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

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

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

(d) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. Where

payment is for the cost incurred for certain reimbursables (such as for sub-consultants or air travel), the invoice must include proof that CONSULTANT has paid such costs.

(e) 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 care and skill ordinarily used by members of CONSULTANT'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 CONSULTANT. CONSULTANT is an independent CONSULTANT of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent CONSULTANT, 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. 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 will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required; or, if this Contract is terminated prior to completion of service, immediately upon termination.

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

(a) To the extent applicable, 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 the work required by a work authorization, and following such completion if CONSULTANT fails to transfer such records to the CITY.

(4) Upon completion of the work required by a work authorization, keep and maintain public records required by the CITY to perform the service. 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.

Section 9. Effective Date and Term.

The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 3 years, 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 CONSULTANT written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONSULTANT.

Section 10. Termination of Contract.

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

(1) Before terminating for convenience, CITY must provide CONSULTANT 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 CONSULTANT's material breach of its contractual obligations, CITY must provide CONSULTANT prior written notice, specifying the breach and demanding CONSULTANT

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 CONSULTANT 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 CONSULTANT's breach without providing CONSULTANT an opportunity to remedy the breach as referenced immediately above, if CONSULTANT or any of CONSULTANT'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 CONSULTANT written notice.

(b) If the termination is for convenience, CONSULTANT will be paid compensation for authorized services performed to the date of termination. If termination is due to CONSULTANT'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 CONSULTANT will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONSULTANT's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONSULTANT 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 CONSULTANT will be made as provided in Section 10(b) for a termination for convenience.

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

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

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

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 negligence, recklessness, or intentionally wrongful conduct of CONSULTANT, or CONSULTANT's officers, employees, or agents, including sub-consultants and other persons employed or used by CONSULTANT in the performance of this Contract.

Section 13. Insurance. *[Risk management needs to approve this provision for every contract.]* 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** as 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. If CONSULTANT wishes to claim an exemption from worker's compensation insurance requirements, CONSULTANT will notify the Risk Manager in writing on CONSULTANT's official letterhead.

(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. CONSULTANT'S Commercial General Liability insurance policy shall provide coverage to CONSULTANT, 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 CONSULTANTS, Property of CITY in CONSULTANT'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.

> [Risk Management to insert all other types and amounts of coverage requirements here]

(b) **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 all proof of such insurance has been filed with and approved by the CITY. CONSULTANT will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates. The certificates will also contain the following language as to cancellation:

"In the event of cancellation of this policy by the insurer or any insured, this Company will give not less than 30 days advance written notice to:

Risk Manager
The City of Daytona Beach
P.O. Box 2451
Daytona Beach, Florida 32115-2451"

If requested by the CITY, 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.

(c) **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.

(d) **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.

(e) **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 to the extent of 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. 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:

To the CITY:
Dennis Mrozek, Planning Director
Daytona Beach Planning
301 S Ridgewood Ave., Suite 240
Daytona Beach, FL 32114
Fax: 386-671-8187

To CONSULTANT:

Fax: _____

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

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

Section 16. Personnel. In order to induce the CITY into entering this Contract, CONSULTANT represents that >, Project Manager will generally perform or directly supervise the tasks assigned to CONSULTANT herein, and that CONSULTANT will not replace >, Project Manager without the CITY's prior written approval. 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.

Section 17. 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 18. 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 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, 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 that 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 19225, 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

CONSULTANT

By: _____

Derrick L. Henry, Mayor

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest: _____

Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____

Robert Jagger, City Attorney

EXHIBIT A: Scope of Services

Exhibit B: Fee Exhibit

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