



# The CITY OF DAYTONA BEACH

"THE WORLD'S MOST FAMOUS BEACH"

Office of the City Manager

August 8, 2017

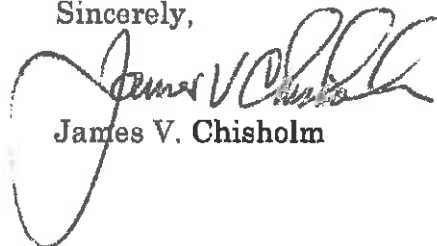
Beth Lemke  
Planning Solutions Corp.  
206 N. Beach Street  
Suite 200  
Daytona Beach, FL 32114

This letter is to provide written notification that the City of Daytona Beach is exercising its option to renew your Professional Services Contract for Strategic Planning Services, Grant Preparation and Grant Administration Services, from the time period of August 15, 2017 through August 14, 2018.

Page 5, Section 6 defines the contract effective date to be August 15, 2014, for a one (1) year term with the option to renew for up to four (4) additional terms. Resolution 14-222 grants the City Manager authority to renew this contract by providing notice in writing.

Congratulations! We look forward to continuing this successful partnership in improving our great city.

Sincerely,



James V. Chisholm



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

August 18, 2016

Ms. Beth G. Lemke, President  
Planning Solutions Corp.  
206 N. Beach St. Suite 205  
Daytona Beach, FL 32114

Re: Amended and Restated Professional Services Contract or Planning and Grant-Related Services

Dear Ms. Lemke:

The above referenced contract, awarded by the Daytona Beach City Commission by Resolution 15-205, expires on August 19, 2016. Pursuant to Section 7, "Effective Date and Term; Renewal", this letter will serve as written notice of the City's renewal of the contract for the first of four one-year terms. Accordingly, the contract expiration date is now August 19, 2017.

The City looks forward to continuing its relationship with Planning Solutions Corp. and thanks you for your diligent efforts on the City's behalf in obtaining and administering grants.

Sincerely,

for James V. Chisholm, City Manager

C: Gary Shimun, Deputy City Manager  
Vault file R15-205

## **AMENDED AND RESTATED PROFESSIONAL SERVICES CONTRACT FOR PLANNING AND GRANT-RELATED SERVICES**

The Parties to this Contract, which amends, restates, and fully replaces the Professional Services Contract approved by City Resolution No. 14-222, are the City of Daytona Beach (the "CITY"), and Planning Solutions Corp. ("CONSULTANT").

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

### **Section 1. STRATEGIC PLANNING SERVICES.**

(a) **In General.** CONSULTANT agrees to perform a range of tasks typically associated with strategic planning to promote the CITY's efforts to obtain grant funding assistance for various CITY projects. Strategic Planning Services consist of the following Tasks:

- (1) *Review CITY's Capital Budget and Capital Project Needs with Key Staff* to determine the initial grant/funding program. This task will occur on an on-going basis after the initial review to respond to any changes in projects, costs, funding opportunities and changes in CITY priorities.
- (2) *Develop Project Synopses* - This document will serve to "frame" the project and present it in a positive manner to potential funding agencies/groups and will assist the Consultant in identifying various funding sources for the project. This material can also be used to explain the project to City Commissioners, decision-makers and potential project funding partners.
- (3) *Develop Funding Database; Update Funding Database Quarterly*, including potential funding sources, likelihood of obtaining funding (based on eligibility/scoring criteria), amount of funding available or that can reasonably be anticipated, match requirements, submittal schedules and other pertinent information.
- (4) *Get Projects Grant-Ready* - determine action items that are needed in advance of the grant opening period to ensure the projects will receive the highest scores possible during the grant application review process by the donor agency.
- (5) *Attend Regular Meetings of the City Manager (staff/department head meetings)* to provide an update on all grant pursuits and funding activities. Attend City Commission meetings, as requested, to provide status updates on grant pursuits and overall grant program management.
- (6) *Public Relations / Press Releases / Grant Award Ceremonies* --Development of press releases, project collateral material, PowerPoint presentations, one-page project overviews, creation of events to highlight grant awards and capital project implementation by the CITY. The purpose of this task is to celebrate the CITY's successes. This enables citizens to see the CITY as action-oriented, enables project sponsors (funding agencies/partners) to see the CITY as a capable partner in project implementation and grant expenditures, and gives credit to the City Commission and partner agencies thereby creating a positive relationship for future funding opportunities.

(b) **Payment for Strategic Planning Services.** In consideration of the CONSULTANT's performance of the Strategic Planning Services herein, the CITY will pay CONSULTANT a Fixed Fee of \$68,250 annually, in 12 equal monthly installments, in arrears. Before the CITY becomes obligated to pay CONSULTANT, CONSULTANT will provide a monthly report describing the Strategic Planning Services

provided during the prior month, written in sufficient detail to identify Tasks performed, date of performance, and a breakdown of time devoted toward the Tasks identified. This Fixed Fee will be CONSULTANT's sole compensation for the Strategic Planning services referenced herein.

**Section 2. Grant Preparation and Administration; Miscellaneous Planning and Grant-Related Services.**

(a) **Scope.** Subject to the conditions stated below in this Section, CONSULTANT will provide additional services described as follows:

- (1) *Grant Preparation Services.* CONSULTANT will have responsibility for preparing the application. CONSULTANT's services include cost-benefit and other technical analyses as required; drafting and coordination of the agenda package for City Commission approval of the application where applicable; formal submission of grant application on behalf of City; coordination and follow-up with granting agency throughout the grant review process; attend meetings or hearings on the grant application; assistance with public presentations as required; and response to requests for additional information from the grant agency and from CITY staff. CONSULTANT will not be authorized to sign any grant applications under this Contract but may be directed to submit completed grant applications on the CITY's behalf.

Wherever possible, CONSULTANT will include CONSULTANT's fees in the grant request.

- (2) *Grant Administrative Services.* CONSULTANT will generally serve as the key grant administrator. CONSULTANT will perform one or more of the following tasks: developing list of grant compliance requirements, coordinating with applicable CITY departments (purchasing, finance, records retention, etc.) to review procedures and requirements for grant compliance; monitoring CITY departments for compliance with specific grant compliance requirements; preparing and submitting grant-related reports, documents, and other records, or assisting in the preparation and submission of such records; assisting City staff in ensuring that such records are maintained in accordance with grant conditions; coordinating, or assisting City staff in coordinating, grant closeout; and providing other services as assigned.
- (3) *Miscellaneous Services.* CONSULTANT will provide miscellaneous planning and grant-related services not addressed above.

(b) **Work Authorizations Required.** CONSULTANT will perform the services described in this Section only upon the CITY'S approval of a written work authorization. A work authorization may consist of Consultant's proposal and the CITY's purchase order, or may be drafted as a stand-alone, mutually executed agreement. Each work authorization will specifically describe the additional services to be provided and any other details required. In addition, the work authorization will describe the fee to be paid to CONSULTANT for providing services and set forth payment terms, consistent with the provisions of this Contract. **NO WORK AUTHORIZATION WILL SUPERSEDE OR AMEND THE TERMS AND CONDITIONS OF THIS CONTRACT.**

(c) **Compensation.** Compensation for CONSULTANT's work under a work authorization will be stated as a fixed- or not-to-exceed fee, or a fee in an amount expressed as percentage of grant award (hereinafter, "Percentage Fee"); and may include reimbursables, as provided below

- (1) *Fixed or Not-to-Exceed Fee.* For fixed- or not-to-exceed fees, the work authorization will include a good faith estimate of the time CONSULTANT anticipates will be required to provide the required services, at the billing rates set forth in Exhibit A.

The inclusion of the good faith estimate will not be deemed to limit or control the amount of time CONSULTANT is required to work if the work authorization is for a fixed fee; nor will the mere inclusion of the good faith estimate entitle CONSULTANT to receive additional fees if CONSULTANT underestimates the time needed to complete the task, without the CITY's prior written approval in the form of a change order.

- (2) *Percentage Fee.* The Parties generally anticipate that many of the grants obtained or administered with CONSULTANT's services authorize the grantee to apply grant funds for payment or reimbursement of such services. In addition, the CITY desires to incentivize CONSULTANT to obtain grant opportunities for the CITY. Therefore work authorizations may provide for a Percentage Fee, subject to the following conditions:

- A. The scope of services will be limited to grant writing and grant administrative services.
- B. For grant writing services, the Percentage Fee will not exceed 5% of the grant award or \$50,000, whichever is less; and the work authorization will provide for payment of the Fee to be made no sooner than grant acceptance.
- C. For grant administrative services, the Percentage Fee will not exceed 5% of the grant award or \$50,000, whichever is less; and the work authorization will include a payout schedule that adequately reflects the schedule of the construction project or study being funded by the grant.
- D. In consideration of the various fees provided for herein, and CONSULTANT's opportunity to obtain significant compensation under Percentage Fee work authorizations, CONSULTANT hereby waives CONSULTANT's right to compensation under a Percentage Fee work authorization (including the Percentage Fee, reimbursables, and compensation or damages based upon equitable principles such as quasi-contract or unjust enrichment) whenever the grantor agency does not offer a grant to the CITY or the City Commission declines to accept the grant. NOTHING HEREIN WILL BE DEEMED TO REQUIRE THE CITY COMMISSION TO APPROVE A GRANT OFFERED TO THE CITY IN RELATION TO CONSULTANT'S WORK UNDER A PERCENTAGE FEE WORK AUTHORIZATION; AND IF THE CITY COMMISSION DECLINES TO ACCEPT SUCH GRANT THE CITY WILL HAVE NO LIABILITY, IN LAW OR IN EQUITY, INCLUDING BASED ON QUANTUM MERUIT OR UNJUST ENRICHMENT, FOR THE SERVICES PERFORMED UNDER SUCH WORK AUTHORIZATION.

- (3) *Reimbursables.* The work authorization may expressly provide for the CITY to reimburse CONSULTANT for certain expenses incurred by CONSULTANT in completing the referenced work, subject to the following conditions:

- A. The following conditions will apply in all instances: (i) reimbursement will not exceed CONSULTANT's direct costs; (ii) travel expenses will not be paid for travel within Volusia County; (ii) CONSULTANT will obtain prior CITY approval for all travel and lodging expenses; (iii) CONSULTANT will adequately document such expenses prior to reimbursement.
- B. If the work authorization provides for a Percentage Fee, reimbursables may not exceed the City Manager's expenditure limits under Section 30-52(a) of the Purchasing Code unless the City Commission approves otherwise.

(d) **Approval Authority.** Work authorizations require City Commission approval except as follows:

- (1) *Fixed- or Not-to Exceed Fee Work Authorizations.* If funds are available, the City Manager is authorized to approve a fixed- or not-to-exceed work authorization with a maximum fee of \$50,000; provided that, where more than one fixed-fee or not-to-exceed work authorization is made or entered into in connection with and directly related to the same project, the cumulative fees for these work authorizations will not exceed \$50,000.00 without City Commission approval. The maximum fees referenced herein are inclusive of reimbursables.
- (2) *Percentage Fee Work Authorizations.* The City Manager is authorized to approve all Percentage Fee work authorizations, subject to acceptance of the grant by the City Commission.

As referenced above, if a Percentage Fee work authorization also provides for reimbursables, then reimbursables may not exceed the City Manager's expenditure limits under Section 30-52(a) of the Purchasing Code unless the City Commission approves otherwise.

(e) **Invoicing and Payment.** The work authorization may set forth specific procedures and conditions for invoicing and payment, provided that the following conditions will apply:

- (1) *Invoicing.* CONSULTANT will invoice the CITY no more frequently than a monthly period. In order to be deemed complete, an invoice must include such detail as may be required for the CITY to determine the amount due CONSULTANT.
- (2) *Payment.* The CITY will pay CONSULTANT within 30 days of receipt of a sufficient invoice.

**Section 3. Contract Status Reporting.** CONSULTANT will provide the City Manager regular grant status reports on at least a monthly basis. The reports will provide in such detail as the City Manager may require, information regarding status of all active grant applications submitted with CONSULTANT's assistance. Grant status reports will be provided at no additional fee, in consideration of the other fees paid to CONSULTANT pursuant to this Contract

**Section 4. STANDARD OF PERFORMANCE.** CONSULTANT's services will at a minimum meet the level of care and skill ordinarily used by qualified persons performing the type of services provided herein within the State of Florida.

**Section 5. DOCUMENTS AND RECORDS.**

(a) CONSULTANT will keep and maintain documents and records as necessary. All grant documents, reports, estimates, logs, and other materials furnished, prepared, or executed to or 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.

(b) 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 ordinarily and necessarily would be required by the public agency in order to perform the service provided herein.

- (2) Providing the public with access to public records on the same terms and conditions that the CITY would provide the records and 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.
- (4) Meeting all requirements for retaining public records and transfer, at no cost to the CITY, all public records in possession of CONSULTANT upon termination of this Contract for any reason, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; and, when such records are stored electronically, providing the CITY all records stored electronically in a format that is compatible with the CITY's information technology systems.

#### **Section 6. RELATIONSHIP BETWEEN PARTIES.**

(a) CONSULTANT is an independent contractor of the CITY. The CITY controls and dictates only the result of CONSULTANT's work, not the manner in which the work is performed.

(b) CONSULTANT will not be deemed to be an employee of the CITY for any purposes whatsoever. CONSULTANT will not be entitled to receive retirement benefits, group health or life insurance, vacation or sick leave, worker's compensation, or any other benefits afforded to CITY employees by virtue of their employment with the CITY. The CITY will not deduct federal taxes, social security, unemployment insurance, worker's compensation, other employment or payroll taxes, or other amounts that the CITY would deduct from CITY employees' pay. CONSULTANT will have sole responsibility to pay all federal, state, and local income tax, and self-employment taxes due in association with this Contract.

(c) CONSULTANT will not act as the CITY's agent and is not authorized to enter into any agreement or incur any obligation on the CITY's behalf or commit the CITY to any obligation in any matter.

**Section 7. EFFECTIVE DATE AND TERM; RENEWAL.** The Effective Date of this Amended and Restated Contract is retroactive to August 15, 2014. The Initial Term of this Contract is one year, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to four additional Terms of one-year each, by providing CONSULTANT written notice.

#### **Section 8. TERMINATION.**

(a) The CITY may by written notice to CONSULTANT terminate this Contract at any time, either for the CITY's convenience or because of the failure of the CONSULTANT to fulfill its contractual obligations. Upon receipt of notice, 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, all fees earned prior to notice of termination will be paid by the CITY. No fees will be paid for services performed after notice of termination is received by CONSULTANT.

(c) If the termination is due to the failure of CONSULTANT to fulfill its contractual obligations, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise. In such case, the CONSULTANT will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby, unless the failure is due solely to a force majeure event as defined below.

(d) If, after notice of termination for the CONSULTANT's failure to fulfill contractual obligations, it is determined by the CITY or 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, 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.

(f) CONSULTANT may terminate this Contract at any time without cause by providing the CITY with 30 days' written notice. In such instance, CONSULTANT will deliver to the City Manager 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, at the time of final invoicing, as a condition of receipt of final payment.

**Section 9. 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, arising from or attributable to any acts or omissions of the CONSULTANT, including the CONSULTANT's officers, employees, and agents, in performing the CONSULTANT's obligations under this Contract.

**Section 10. 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. 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 contractors, 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. The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$100,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$300,000. The Risk Manager for the CITY may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.



(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 such proof of such 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. 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 or 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 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 11. 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:** James V. Chisholm  
City Manager  
The City of Daytona Beach  
301 S. Ridgewood Avenue  
Daytona Beach, FL 32114

**If to the  
CONSULTANT:** Beth G. Lemke  
President  
Planning Solutions Corp  
206 N. Beach Street, Suite 205  
Daytona Beach, FL 32114

All references herein to the "City Manager" will be deemed to include the City Manager's designee.

**Section 12. PERSONNEL.** In order to induce the CITY into entering this Contract, CONSULTANT represents that Beth Lemke will personally perform the tasks assigned to CONSULTANT herein except where otherwise specifically permitted.

**Section 13. CITY'S RESPONSIBILITIES.** The CITY agrees to make available for review and use by the CONSULTANT, reports, studies, and data in the CITY's possession relating to the services required. The CITY will periodically meet with the CONSULTANT to facilitate coordination and ensure expeditious review of work product.

The CITY MANAGER or designee will be the CITY's main point of contact with CONSULTANT in regards to Strategic Planning Services, and will also provide a staff liaison who will be the main point of contact in regards to CONSULTANT's Grant Preparation and Grant Administration Services herein.

**Section 14. 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; nor will approval of any work authorization serve to operate as such waiver. 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 15. 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 attending 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 16. GENERAL PROVISIONS.**

(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 unique experience. 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. CONSULTANT expressly acknowledges and agrees to comply with the requirements of §119.0701(2)(a-d), Florida Statutes (2014), regarding maintenance, access, disclosure, and transfer of public records by a Contractor with a Public Agency.

(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 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) **Police Power and Sovereign Immunity.** Nothing herein will be deemed to waive the City's police power or sovereign immunity.

(i) **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.

(j) **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.

(k) **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.

(l) **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.

(m) **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.


(n) **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.

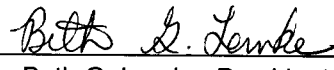
(o) **No Conflicts.** CONSULTANT affirms that to the best of CONSULTANT's knowledge there exists no conflict of interest, and every interest and every effort will be made to avoid the appearance of conflict of interest, between CONSULTANT, including CONSULTANT's family, business, or financial interests, and the services provided under this Contract. Should this situation change during the time of this Contract, the CONSULTANT will promptly advise the CITY of such change.

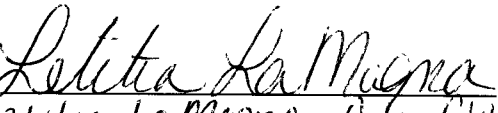
IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original on the dates referenced below.

THE CITY OF DAYTONA BEACH

PLANNING SOLUTIONS CORP

By:   
Derrick L. Henry, Mayor

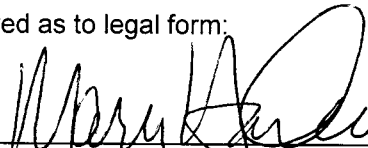
By:   
Beth G. Lemke, President

Attest:   
Letitia LaMagna, City Clerk

Date: July 27, 2015

Date: August 19, 2015

Approved as to legal form:

By:   
Marie Hartman, City Attorney