

**CONTINUING PROFESSIONAL SERVICES CONTRACT
GENERAL ARCHITECTURE
CONTRACT NO. 0517-0330-ENB**

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Ebert Norman Brady Architects, PA, a Florida Profit Corporation ("CONSULTANT").

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

Section 1. Scope of Services. CONSULTANT will provide professional GENERAL ARCHITECTURAL SERVICES to the CITY from time to time at the request of the CITY during the Term of this Contract.

These services will specifically consist of the following: analyze functional and aesthetic programming needs and provide contract bid documents for new building construction, recreational and passive park facilities and existing building renovations and repairs. Secondary services required to be provided by the Architect will include but not limited to design of ancillary systems such as elevators, pedestrian railing and security fencing systems, fire suppression systems, electronic and non-electronic sign design, production of conceptual drawings for buildings and activity centers and analysis of alternative concepts

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 provide payment for services rendered by the CONSULTANT. No services will be provided under this Contract, and no payment obligation will arise for performance of services, except when specifically authorized by CITY purchase order issued in accordance with the CITY's procurement policies. No purchase order issued may alter the terms and conditions of this Contract. In case of a conflict with a purchase order this Contract will govern. The purchase order 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 an open purchase order 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 purchase order 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) Each purchase order 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 purchase order will include sufficient documentation to describe the basis on which the fee has been calculated.

(1) Except as provided below, the Fees for a purchase order 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 Agreement.

(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.

(b) In addition to the Fee, the purchase order may provide for reimbursement of certain types of expenditures that CONSULTANT may incur in providing the service required, such as:

(1) *Copying and travel-related expenses.* As to travel-related expenses, mileage will be paid in accordance with then-current IRS business related mileage rate and in such cases, only for travel in excess of 50 miles round trip.

(2) *Sub-consultant costs.* Sub-consultants costs will be paid at CONSULTANT's direct cost, without mark-up.

In all instances any limitations set forth in Exhibit B will apply

(c) 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 purchase order. CONSULTANT may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the date of the purchase order.

(b) For purchase orders providing for fixed fees: if the purchase order 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 purchase order 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 purchase orders 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 of 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 contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONSULTANT will be solely responsible for payment of all federal, state, and local income tax, and self-employment taxes, arising from this Contract; and CONSULTANT agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due for such taxes, or for social security, unemployment insurance, worker's compensation,

or other employment or payroll taxes. CONSULTANT will also responsible for the performance of CONSULTANT's sub-consultants.

Section 7. Documents.

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

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

Section 8. Public Records.

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

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

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

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

(4) Upon completion of the work required by a specific purchase order, 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 provide to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

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

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

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

Section 9. Effective Date and Term. The Effective Date of this Contract is the last signature date set forth below (the "Effective Date"). This Contract will begin on the Effective Date and continue in effect for 2 years, commencing on the Effective Date.

Any purchase order entered into prior to expiration or termination of the Term will remain valid. The CITY will have the option to renew this Contract for up to 3 Terms of 1 year each. Unless waived by CONSULTANT, the CITY must provide CONSULTANT written notice at least 60 days before the end of the current Term in order to exercise the option(s).

Section 10. Termination of Agreement

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

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

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

(b) If the termination is for the CITY's convenience, CONSULTANT will be paid compensation for services performed to the date of termination; and, if the City's notice of termination requires CONSULTANT to continue any services being provided at that time under an open purchase order, CONSULTANT will be paid for such services through the date that such services terminate.

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

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

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

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

If CONSULTANT is providing services under an open purchase order 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 12. Indemnification. CONSULTANT will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the CONSULTANT's negligent acts or omissions, or reckless or intentionally wrongful conduct in the performance of this Contract. For purposes

of this Section, the term, "CONSULTANT," includes CONSULTANT's officers, employees, and agents, including subcontractors and other persons employed or used by CONSULTANT. This indemnification is in no way limited by any insurance provided by CONSULTANT.

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

(a) Coverage and Amounts.

(1) Workers Compensation Insurance 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

(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. . 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 Contractors, 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 \$1,000,000. The Risk Manager for the CITY may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

(3) Professional Liability Insurance, insuring CONSULTANT and other interests, including, but not limited to, any associated or subsidiary companies involved in the work, for errors or omissions in the performance of professional services to be rendered pursuant to this Contract. The limit of liability will be no less than \$1,000,000.

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

Unless specifically waived hereafter in writing by the Risk Manager, Contractor agrees that the insurer shall waive its rights of subrogation, if any, against the City on each of the foregoing types of required insurance coverage

(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 all required insurance has been filed with and approved by the CITY. CONSULTANT will furnish such proof in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates

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

(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 by the existence of any exclusions or limitations in insurance coverages, or by CONSULTANT'S failure to obtain insurance coverage

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

Section 14. Notices. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:

CITY OF DAYTONA BEACH
ATTN: FRANK VAN PELT
950 BELLEVUE AVENUE
DAYTONA BEACH, FL 32114
FAX 386-671-5820

To CONSULTANT:

EBERT NORMAN BRADY ARCHITECTS
ATTN: WILLIAM PJ EBERT, PRINCIPAL
1361 13TH AVENEU SOUTH
JACKSONVILLE BEACH, FL 32250

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

Section 15. Personnel. CONSULTANT represents that CONSULTANT has or will secure at CONSULTANT's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY

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

The CITY will have the right to approve or reject any sub-consultants that CONSULTANT proposes to use for work assigned in a purchase order.

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

Section 17. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONSULTANT, will be construed to operate as a waiver of the CITY's rights under this Contract. CONSULTANT will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONSULTANT's negligent or wrongful provision of any of the services furnished under this Contract.

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

Section 18. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any other 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 will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization

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

Section 19. General Terms and Conditions.

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

(b) **Assignments and Subcontracting.** 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

(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.

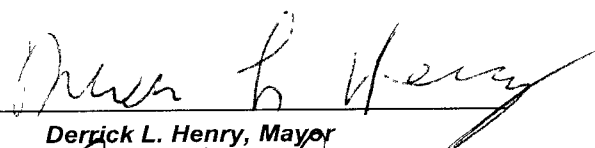
(n) Incorporation of RFP and Proposal. The CITY's Request for Proposals 0517-0330 and the CONSULTANT's responsive proposal are incorporated herein by reference as Composite Exhibit C. Composite Exhibit C is not attached but will remain on file in the Office of the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between Composite Exhibit C and other provisions of this Contract, including Exhibits A and B, this Contract will govern.

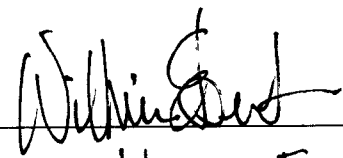
(o) Integration. This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

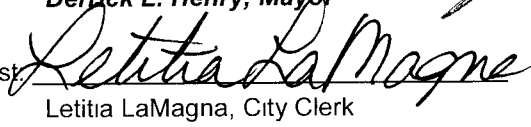
IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original

CITY OF DAYTONA BEACH

EBERT NORMAN BRADY ARCHITECTS, PA

By: 
Derrick L. Henry, Mayor

By: 

Attest: 
Letitia LaMagna, City Clerk

Printed Name: WILLIAM EBERT
Title: PRESIDENT

Date: 8-17-17

Date: JUNE 15, 2017

Approved as to legal form:

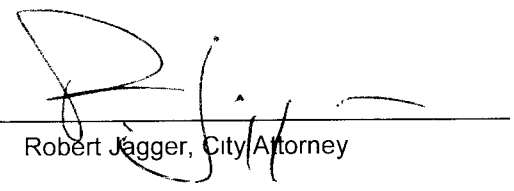
By: 
Robert Jagger, City Attorney

EXHIBIT A: Scope of Services

The City is soliciting Professional General Architectural Services to analyze functional and aesthetic programming needs and provide contract bid documents for new building construction, recreational and passive park facilities and existing building renovations and repairs. Secondary services required to be provided by the Architect will include but not limited to design of ancillary systems such as elevators, pedestrian railing and security fencing systems, fire suppression systems, production of conceptual drawings for buildings and activity centers and analysis of alternative concepts. The selection of three Consultants is anticipated. All Consultants will be licensed to practice their specific disciplines in the State of Florida. As the need for architectural services arises, the Consultant will be contacted to discuss the desired project outcome and subsequently provide a scope of work and a fee proposal for each project assignment. A Work Authorization will be issued by the City upon acceptance of a mutually acceptable scope of services, schedule, and fee proposal.

The Consultant's work will be performed by the key personnel at the office location identified in the Proposal and the primary sub-consultant's identified in the Proposal for services such as but not limited to interior design, foundation evaluations, electrical, mechanical, topographic site surveys, specialty architectural support functions, etc. All changes of key personnel or sub-consultants will be reviewed and will require approval by the City in writing prior to the issuance of a Work Authorization.

The Consultant will perform the following: general architectural services for inland and coastal marine structures and ancillary systems components to include but not be limited to preliminary architectural/systems analysis, design, architectural design, permitting, site and concepts/alternatives analysis, inspection related to existing infrastructure, and construction inspection of their designed projects as needed. Services may include, but not be limited to, the following as authorized by individual Work Authorizations for projects:

- Design of building infrastructure that is at the highest and most cost-beneficial energy standards exceeding ASHRAE 90.1 standards and is in compliance with applicable local, State and Federal building codes, grant agency requirements and or requirements such as A.D.A., coastal wind loading, architectural best management practices, etc.
- Preliminary architectural/systems analysis, cost estimates (pre-design budgeting, and at 60%, 90% and final submittals), design development, construction plans preparation, permitting and creation of contract bid documents for construction, including special conditions/provisions and specifications for City projects.
- Analysis of concepts/alternative project solutions, existing infrastructure and land use conditions affecting the site and the ability to use the site for its proposed use as an activity center/destination, building location, an aesthetically enhanced roundabout or a recreational or passive park including neighborhood impacts.
- Bidding and construction phase services including:
 - Answering questions during the bidding process

- Assuring project compliance with regulatory agency or grant providing agency requirements
- Assisting in the preparation of any required addenda
- Attending pre-bid conference
- Reviewing bids, preparing bid tabulation sheet, and making recommendation for award
- Attending and administering a preconstruction conference
- Visiting the work site a predetermined number of times
- Determining if work is proceeding in accordance with the Contract Documents
- Issuing necessary interpretations, clarifications, and change orders as required.
- Reviewing and recommending approval or rejection of Shop Drawings, samples, and other data which contractor(s) are required to submit
- Evaluating and determining the acceptability of substitute equipment and materials
- Reviewing all certificates of inspection, testing, and approvals required by laws, rules, regulations, ordinances, code orders, or the Contract Documents
- Reviewing and approving payment applications as required
- Project closeout

Each Project will have an expanded Scope of Services tailored to the specific needs of the City. The expanded Scope of Services may include but is not limited to:

- Project Coordination and Administration
 - The Consultant will coordinate the project design/architectural team, organize, and provide minutes for the kickoff meeting of the project team.
 - The Consultant will coordinate with all jurisdictional/regulatory agencies to identify, negotiate, and implement all necessary requirements including regulatory agency, granting agency and historical restoration compliance.
 - The Consultant will prepare, present, monitor, and maintain a production schedule for the tasks defined in the scope of services
 - The Consultant will conduct progress meetings with the project team and the City on a regular basis throughout the completion of the design phase and creation of construction documents.
 - The Consultant will organize and lead public involvement and stakeholder meetings. The Consultant will be responsible for recording meeting minutes and preparing memoranda for distribution.
 - The Consultant will supply minutes of all meetings within one week of meeting.
 - The Consultant will coordinate sub-consultants services including satisfactory and timely performance.
- Design Development

- The Consultant and appropriate members of the project team will perform field investigations of the proposed project site for initial suitability and determination and recommendation of project design alternatives.
- The Consultant and appropriate project team members will meet with public and private utility providers in the area to confirm existing utility locations and conflicts.
- The Consultant will identify all permitting /regulatory agencies, determine permitting requirements, prepare submit and respond to all requests for information regarding the permit applications and provide the necessary information to secure approved permits. The City will pay the permitting agencies required application fee.
- The Consultant will work with the City's project manager and legal department to evaluate the impact of the design on adjacent properties.
- The Consultant will produce design development drawings to perform modifications and describe the overall character and extent of the project. Drawings will include plans, elevations, and sections complete and suitable for competitive bidding and construction use.
- Design development will include site inspections required to confirm site plan and records of utilities and other relevant features at the project site as they relate to the project design including compliance with regulatory agency design requirements and design review process.
- The Consultant will prepare complete design development plans to address revisions as necessary based upon comments received during City and agency reviews.
- The Consultant will prepare alternatives for the sequencing, planning and timing of construction, and the maintenance of traffic for consideration by the City.
- The Consultant will prepare a statement of probable construction costs, phasing, architectural alternatives summary, and viable construction methods as necessary.
- The Consultant will prepare concept drawings showing existing surface and subsurface improvements at 30%. The Consultant will prepare alternatives to resolve neighborhood concerns, site and use conflicts and the costs associated with each alternative.
- Construction Documents
 - The Consultant will prepare construction documents at a true and suitable scale for all items described above including demolition of existing features to be removed, civil and landscape architectural plans, and permit applications and permit drawings which are appropriate for public bidding.
 - The Consultant will present the construction documents to appropriate project members and City department at 30%, 60%, and 90% completion for review and approval.
 - The Consultant will coordinate and assemble technical specifications, design cover sheet and prepare an itemized bid schedule.

- The Consultant will coordinate with appropriate project team members to ensure that all City required documents are assembled as a complete bid package that is regulatory agency and Building Code compliant.
- Local Government, Granting and Other Agency Coordination
 - The Consultant will coordinate their design activities and finished project plans and specifications with the above listed groups to ensure adequate opportunity on their behalf to address design and construction issues and provide information that will aid in the design, alleviate duplication of effort and construction and minimize costs.
- Construction Administration
 - The Consultant will respond to Requests for Information (RFI's) during construction
 - Provide submittal register and review and approve or reject shop drawings and submittals provided by the contractor
 - Provide onsite inspections verifying that all items are furnished and installed per the construction documents
 - Site visits as necessary to rectify problems and discrepancies with the construction documents
 - Provide progress reports to verify that scheduled milestones are being met and pay applications are in accordance with the schedule of values and the progress schedule
 - The Consultant will prepare a punch list and perform a final inspection of the Contractor's work

Deliverables will be project specific and may include, but not be limited to:

- Final reports/studies/plans in the form of three (3) bound Preliminary Architectural or Technical Recommendation Memorandums that address analysis of need and project alternative approaches, with signed and sealed original documents. All elements of the reports will be provided on a CD in applicable format to include .pdf, word, .dwg and .jpg formats.
- Final construction documents and all related project correspondence, reports and permits will be to true scale for the paper size used and saved on CD in 24" x 36".pdf, 11"x17" .pdf format and AutoCADD format and/or other version as determined by the City.
- Final construction plan deliverables including four (4) signed and sealed, bound sets of plans on 24" x 36" sheets, along with four sets of specifications, and one (1) set of final construction plans on 24" x 36" mylar. Specifications will be provided in Word; bid schedules in an Excel spreadsheet and both specifications and bid schedules in pdf format
 - Testing results will be forwarded to the City at an interval to be determined, in a bound notebook with synopsis of results and outstanding issues noted on the cover page.
 - All geo-spatial information including plans, surveys, maps, and aerial photography will be provided in AutoCAD or the ESRI Personal Geodatabase format. This data will be referenced by a minimum of three

(3) coordinates in the Florida State Plane Coordinate System, East Zone in US Survey Feet. The horizontal datum is NAD83/ (1990) HARN and the vertical datum is NAVD 88 Feet, in accordance with Florida Statutes, Chapter 177.151.

- AutoCAD files will follow the City's AutoCAD standard presentation format.
- All text and graphic information will be provided in the City standard MS Office software (MS Word, MS PowerPoint, etc.) and in the Adobe .PDF format, unless otherwise specified. This digital information is also to be provided on CDs or DVDs.
- The consultant will be responsible for the as-built drawings in AutoCAD standard. The red-lined as-builts will be supplied by the Contractor so that final drawings and specifications can be developed for project close-out.

CONSULTANT CONTRACT PERFORMANCE EVALUATION: The City will provide the Consultant with an assessment of their overall contract performance and likelihood of annual contract renewal based upon their demonstrated ability to meet the following criteria in each of their individual project schedules.

- Deliverable dates for each plans completion percentage submittal
- Submittal dates for permits
- Compliance with final submittal date and project design budget

Exhibit B: Fee Exhibit

Position	Hourly Rate	Multiplier	Billable Rate
Principal Sr. Architect	52.88	3.0	\$158.54
Principal Architect	43.27	3.0	\$129.72
Architect-Batoon	34.13	3.0	\$102.33
Architect-Walz	28.50	3.0	\$85.44
Architect, Intern	15.42	3.0	\$46.23
Financial	25.96	3.0	\$77.83
Clerical	16.83	3.0	\$50.45

Reimbursable Fees:

Description		UOM	Price
Printing (Specifications)	Copies	each	\$.10
Printing 11x17	Copies	each	\$.19
Printing 22x34	Copies	each	\$.78
Photocopies / B&W	Copies	each	\$.12
Photocopies / Color	Copies	each	\$.95
Travel	Miles	each	\$.58

All of the above rates are fixed and firm for the duration of the original 5 year term, and any subsequent renewals unless the Contract is amended to incorporate price increases requested by Consultant

EXHIBIT C:

Exhibit C is not attached but will remain on file in the Office of the City Clerk.

From: [Frances Vickers](#)
To: [Zimmerman, Kirk](#)
Cc: [William Ebert](#)
Subject: RE: Emailing: COI-ENB, CONTRACT-ENB
Date: Monday, June 19, 2017 1:29:06 PM
Attachments: [COI 2017-06-15 StateFarm - Daytona Annual Contract.pdf](#)
[COI 2017-06-15 USI Suncoast - Daytona Annual Contract.pdf](#)

Good Afternoon Mr. Zimmerman,

The Professional Liability and Workers Comp insurance is with USI Suncoast on a separate certificate. Please see attached COI USI Suncoast.

State Farm, our General Liability agency, did not include the Additionally Insured note since the request is implemented with a separate rider to our existing policy and an additional charge. You will be sent directly, a separate 4-5 page rider with the additionally insured declaration and information. I just spoke to our Rep at State Farm and it has been ordered and is being processed.

The Professional Liability insurance does not list the client as additional since a client does not typically render professional services, a client would not receive any added protection by being named as an additional insured. To the contrary, the client would be prohibited from filing a claim against the insured under the policy.

ENB Architects does not have any company vehicles therefore each partner has an individual policy. I will have Mr. Ebert send his personal COI for his auto ASAP.

Sorry for any inconvenience, I will touch base with you in a few days to confirm receipt of the General Liability's Additionally Insured rider. We appreciate the opportunity to work with you and I will make sure this is all tidied up in the next few days.

Fran Vickers
Business Manager
Ebert Norman Brady Architects
1361 13th Avenue South, Suite 230
Jacksonville Beach, Florida 32250

Phone 904.241.9997
Fax 904.241.7526
www.enbarchitects.com

-----Original Message-----

From: Zimmerman, Kirk [<mailto:ZimmermanKirk@CODB.US>]
Sent: Monday, June 19, 2017 11:22 AM
To: usi.certrequest@usi.com; Frances Vickers
Subject: FW: Emailing: COI-ENB, CONTRACT-ENB

See Risk Management's comments below.

Kirk Zimmerman, CPPB
City of Daytona Beach
PH: 386-671-8081
FX: 386-671-3964

-----Original Message-----

From: Flaniken, Bob
Sent: Monday, June 19, 2017 11:03 AM
To: Zimmerman, Kirk <ZimmermanKirk@CODB.US>

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC, 1715 N. Westshore Blvd. Suite 700 Tampa, FL 33607	CONTACT NAME		INSURER(S) AFFORDING COVERAGE		NAIC #
	PHONE (A/C, No, Ext) 813 321-7500	FAX (A/C, No)	INSURER A Travelers Casualty and Surety	19038	
INSURED Ebert Norman Brady Architects 1361 13th Ave. S., Suite 230 Jacksonville, FL 32250	E-MAIL ADDRESS		INSURER B Liberty Insurance Underwriters	19917	
			INSURER C		
			INSURER D		
			INSURER E		
			INSURER F		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

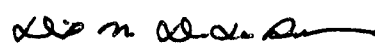
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	UB6660Y843	07/03/2017	07/03/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E L EACH ACCIDENT \$100,000 E L DISEASE - EA EMPLOYEE \$100,000 E L DISEASE - POLICY LIMIT \$500,000
B	Professional Liability			AEX1020870003	08/15/2016	08/15/2017	\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Project #0517-0330-ENB, Continuing Professional Services Contract General Architecture.

Professional Liability coverage is written on a claims-made basis.

CERTIFICATE HOLDER CANCELLATION

Daytona Beach Purchasing Division Attn: Kirk Zimmerman P.O. Box 2451 Daytona Beach, FL 32115-2451	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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