#### PROFESSIONAL SERVICES CONTRACT

**0113-2250**

The Parties to this Contract are the City of Daytona Beach (the “CITY”), and Alpha-Omega Training and Compliance Inc., a Florida profit corporation (“CONSULTANT”).

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

**Section 1. Scope of Services.** CONSULTANT will from time to time provide safety consulting and training services to the CITY upon request. The Services are further described as follows:

(a) Safety Inspections (audits) as required by the CITY of the CITY’s facilities, including work stations and work set-ups, using Occupational Safety and Health Administration (OSHA) and other applicable recognized safety standards as a guide***.***

(b) Safety training classes for topics requested by the CITY using OSHA and other applicable recognized safety standards as a guide. Training will include a combination of classroom, on-site, hands on training which may include videos and PowerPoint presentations combined with real world scenarios and problem solving. Depending on the topic, the CONSULTANT may be required to administer and grade quizzes and tests.

Services may be required at two separate locations at the same time. Accordingly, on those occasions where the CITY declines to use its own Safety Officer to provide services at one of the locations, CONSULTANT will be required to provide personnel at both required locations. .

The CITY’s Risk Manager will meet periodically with the CONSULTANT to ensure expeditious review of work product and to facilitate coordination.

**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.

**Section 3. Fee; Limitations on Fee**. The CITY will pay CONSULTANT a Per Day Fee, and a Per Diem for expenses, for each employee or agent of CONSULTANT’s who provides service at a CITY facility pursuant to this Contract. The initial Daily Fee is $1,374 per day, and the initial Per Diem is $118 per day. This Fee is the CONSULTANT’s sole compensation for the services performed under this Contract.

Prior to the beginning of a Renewal Term, CONSULTANT may request an increase in the Daily Fee or Per Diem. CONSULTANT must make such request in writing, at least 60 days prior to the expiration of the current Term, and must include in the request documentation of the reason for the increase If the proposed increase is not acceptable to the CITY, this Contract will continue at the current Fees. If the increase is acceptable to the CITY, then the Parties will formally amend the Contract to specify the revised Daily Fee and Per Diem.

**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 referenced Exhibits, payment terms and conditions are as follows:

(a) No payment will be due for services performed until CONSULTANT submits a proper invoice. CONSULTANT will submit an invoice no more frequently than monthly.

(b) In order to be considered to be proper, the invoice must include all information 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, such as where payment is not due until deliverables are provided, or reimbursement of expenses is contingent upon proof of same.

(c) 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 qualified persons 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.

**Section 7. Documents and Records.**

(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 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) CONSULTANT understands and agrees that CITY will have the right to re-use 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.

(c) CONSULTANT will comply with the following requirements pursuant to Florida Statutes Section 119.0701, as amended pursuant to Laws of Florida Chapter 2013-154, which include the following:

(1) CONSULTANT will keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service provided herein.

(2) CONSULTANT will provide 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) CONSULTANT will ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) CONSULTANT will meet 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. When such records are stored electronically, CONSULTANT will provide the CITY all records stored electronically in a format that is compatible with the CITY’s information technology systems.

**Section 8. Effective Date, Term, and Renewal.** The Effective Date of this Contract is the last signature date set forth below (the “Effective Date”). The Term of this Contract is one year, 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 four Terms of one year each, by providing CONSULTANT written notice at least 30 days before the end of the current Term.

**Section 9. Termination of Agreement**

(a) Either Party may terminate this Contract, in whole or in part, at any time, for the terminating Party’s convenience or upon the other Party’s material breach, by providing written notice as follows:

1. Before terminating for convenience, the terminating Party must provide the other Party 30 days’ notice. Termination will be automatic upon the expiration of the 30-day period.
2. Before terminating due to the other Party’s material breach of its contractual obligations, the terminating Party must provide the breaching Party prior written notice, specifying the breach and demanding that the breaching Party remedy the breach within 21 days of the notice. This Contract will terminate automatically and without need for additional notice if the breaching Party fails to remedy the material breach within this 21-day period.

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

(b) If either the CITY or CONSULTANT terminate for convenience, CONSULTANT will be paid compensation for services performed to the date of termination.

(c) If CITY terminates due to the CONSULTANT’s material breach, the CITY reserves all rights and remedies it may have under law due to such breach. If CONSULTANT terminates due to CITY’s material breach, CONSULTANT’s remedies will be limited to receipt of any monies owed at the time of termination.

(d) If the CITY terminates this Contract based on CONSULTANT’s material breach and it is later 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.

**Section 10. Suspension of Services.** If the notice of default 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, unless specifically directed otherwise by the CITY.

**Section 11. 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.

**Section 12. 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 $100,000 per occurrence.

**(2) Liability Insurance**: Comprehensive General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the CONSULTANT and any other interests, including but not limited to any associated or subsidiary companies involved in the work.

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 at the site of the project or in any way connected with the work which is the subject of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE SHALL NAME THE CITY AS AN ADDITIONAL INSURED.

The Liability Insurance will be for a combined single limit for bodily injury and property damage of no less than $1,000,000. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than $1,000,000.

**(3) Professional Liability Insurance**: Professional Liability Insurance insuring the CONSULTANT and other interest, 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 of Professional Liability Insurance will be no less than $1,000,000.

**(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 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 13. 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 If to the CONSULTANT**:

Mark E. Jones Todd R. McDowell

Risk Manager President

The City of Daytona Beach Alpha-Omega Training & Compliance Inc.

304 S. Ridgewood Ave. 1535 N. Cogswell St., Suite C-26

Daytona Beach, FL 32114 Rockledge FL 32955

Fax: 386-671-3261 Fax: 321-989-0322

Either Party may redesignate the person or address for receipt of notice by providing the other Party written notice in accordance with the foregoing requirements.

**Section 14. Personnel.** In order to induce the CITY into entering this Contract, CONSULTANT represents that the persons listed in CONSULTANT’s Proposal dated August 12, 2013, will provide the services required herein. CONSULTANT will not replace any of these persons listed in the Proposal without the CITY’s prior written approval. All of CONSULTANT’s personnel providing services pursuant this Contract will be properly qualified under applicable federal and state laws and regulations, and will have all required certifications.

**Section 15. 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 meet periodically with the CONSULTANT to facilitate coordination and ensure expeditious review of work product.

**Section 16. 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 17. 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 medication 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 18. General Terms and Conditions.**

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

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

**(c) Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONSULTANT will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONSULTANT.

**(d) Truth in Negotiations Certificate.**  CONSULTANT hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

**(e) No Third Party Beneficiaries.**  There are no third party beneficiaries of CONSULTANT’S services under this Contract.

**(f) Contingency Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

**(g) Nondiscrimination.** CONSULTANT 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) 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.

**(n) Incorporation of RFP and Proposal.**  The CITY’s Request for Proposals 0113-2250, including any addenda, and the CONSULTANT’S responsive Proposal dated August 12, 2013, are incorporated herein by reference as Composite Exhibit A. Exhibit A is not attached; however a copy of the Exhibit will remain on file with the City Clerk. In case of conflicts between this Contract and the Exhibit, this Contract will govern. In case of conflicts between the RFP and Proposal, the RFP will govern.

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

**THE CITY CONSULTANT**

By: By:

Derrick L. Henry, Mayor Name:

Title:

Attest: Date:

Jennifer L. Thomas, City Clerk

Date:

Approved as to legal form:

By:

Marie Hartman, City Attorney

EXHIBIT A

SCOPE OF SERVICES

**Composite Exhibit B, consisting of the RFP and Proposal,**

**is on file in the Office of the City Clerk**