

PROFESSIONAL SERVICES CONTRACT

The Parties to this Contract 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 GRANT ADMINISTRATIVE SERVICES.

(a) **In General.** Subject to the conditions stated below in this Section, from time to time the City Manager may direct and CONSULTANT may agree for CONSULTANT to provide grant preparation services, grant administrative services, or a combination of both grant preparation and grant administrative services on behalf of the CITY. These services are further described as follows:

- (1) Grant Preparation Services. CONSULTANT will have primary 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 assistance with 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.
- (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.

(b) **Work Authorizations Required.** CONSULTANT will only perform Grant Preparation and Grant Administrative Services pursuant to written work authorizations. A work authorization may consist of Consultant's proposal and the CITY's purchase order, or may be drafted as stand-alone, mutually executed agreements. No work authorization will supersede or amend the terms of this Contract. Each work authorization will specifically describe the Grant Preparation or Grant Administration Services to be provided and any other details required. In addition, a work authorization will describe the fee to be paid to CONSULTANT for providing services and set forth payment terms, consistent with the requirements of this Contract.

(c) **Percentage Fees for Grant Preparation and Grant Administrative Services.** 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. Therefore, except as provided in subsection (d), below, CONSULTANT will receive a Percentage Fee for the provision of such services. For purposes herein, the term "Percentage Fee" means a fee based on a percentage of the total funds awarded under a grant. The following conditions apply to the Percentage Fee.

- (1) Sole Compensation. The Percentage Fee will be CONSULTANT's sole compensation, and CONSULTANT will bear all of CONSULTANT's costs associated with the service provided.
- (2) Submittal, Award, and Acceptance. The use of Percentage Fees to compensate CONSULTANT for Grant Preparation and Grant Administrative Services as

described herein is intended to incentivize CONSULTANT to provide the highest level of service and maximize the CITY's opportunity to obtain grant assistance. CONSULTANT acknowledges that, where a work authorization provides for CONSULTANT to be compensated by the Percentage Fee, if the City declines to submit the grant application, or the grantor agency does not offer the City a grant award, or the City declines to accept a grant award offered by the grantor agency, CONSULTANT will not be entitled to ANY compensation for the services provided.

- (3) Grant Terms and Conditions. CONSULTANT's right to receive the Percentage Fee is subject to any Terms and Conditions of the grant award. For example, if the grant limits the Percentage Fee for Grant Preparation Services to 3% of the grant award, the Percentage Fee will be so limited. As another example, if the grant requires detailed invoices or other documentation as a condition for the application of grant funds to pay the Percentage Fee, CONSULTANT will provide such invoices.
- (4) Cap on Percentage Fee. In each instance in which Grant Preparation or Grant Administrative Services are provided, there is a Cap on the Percentage Fee. The Cap will be the lesser of (i) 5% of grant funds awarded, (ii) \$50,000.00, or (iii) any cap required by the terms and conditions of the grant, if applicable.

(d) **Alternate Compensation.** The Parties anticipate that (i) some grants for which CONSULTANT will provide Grant Preparation or Administrative Services do not authorize grant funds to be used to pay for such services; and (ii) for other grants, CONSULTANT may be required to spend comparatively little time providing Grant Preparation or Administrative Services such that a Percentage Fee is not needed to adequately compensate CONSULTANT. The City Manager may direct and CONSULTANT may agree in advance to an alternate basis for compensating CONSULTANT for Grant Preparation or Grant Administrative Services in relation to such grants. The following conditions apply:

- (1) Fixed Fee. The alternate compensation may include a Fixed Fee based on a good faith estimate of the time CONSULTANT anticipates will be required to provide the required services. Except when specifically provided otherwise in the work authorization, the CITY will not be required to pay CONSULTANT unless and until CONSULTANT has completed, as applicable: (i) Grant Preparation Services such that the grant application is ready for submission, or (ii) Grant Administrative Services to the point of project closeout.
- (2) Fee Based on Time Billed. In lieu of the Fixed Fee, the alternate compensation may be based on time billed at a rate of \$120.00 per hour. In such instances, the fee will include a cap.
- (3) No Increase in Fee; Exceptions. The Fee provided for herein, whether Fixed or based on the time billed, will not be increased if CONSULTANT is required to spend additional time providing the requested services, except in extraordinary situations that were not reasonably anticipated in advance and not within CONSULTANT's control. Examples of such situations include where the terms and conditions of the grant program or grant applications change substantially during the grant writing process. In such instance, CONSULTANT must provide the CITY notice of the need for a Fee increase in advance. The CITY will have reasonable discretion whether to adjust the Fee in such instance.
- (4) Reimbursable Expenses. The alternate compensation may also include, subject to a cap, provision for reimbursement of eligible expenses incurred by CONSULTANT in preparing the grant. Such expenses may include reasonable out-of-County and out-of-State travel expenses such as air fare, mileage, lodging, and meals. They exclude mileage expenses within Volusia County.

CONSULTANT will be required to have prior approval from the CITY before incurring such expenses and will be required to submit proper documentation of the expense actually incurred.

- (5) Annual Cap on Alternate Compensation. The total Alternate Compensation that CONSULTANT may receive pursuant to this Section 2(d) during any one year Term will not exceed \$50,000.00 without prior City Commission approval. This Annual Cap is inclusive of compensation for reimbursement of expenses.

(e) **Invoicing and Payment.** A work authorization for the provision of Grant Preparation or Administrative Services may set forth specific procedures and conditions for invoicing and payment. In the absence of such conditions:

- (1) Invoicing. As to work authorizations for Grant Preparation Services for a Percentage Fee, CONSULTANT may invoice the CITY after CITY accepts the grant award. As to work authorizations for Grant Preparation or Administrative Services for a Fixed Fee, CONSULTANT may invoice the CITY upon the occurrence of the conditions set forth in Section 2(d)(1). In all other instances, CONSULTANT will invoice the CITY no more frequently than monthly. 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. 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 4. 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, relating to Public Records:

- (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 5. 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 6. EFFECTIVE DATE AND TERM; RENEWAL. The Effective Date of this Contract is 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 7. 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 8. 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 9. 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 10. 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	If to the
CITY: James V. Chisholm	CONSULTANT: Beth G. Lemke
City Manager	President
The City of Daytona Beach	Planning Solutions Corp
301 S. Ridgewood Avenue	206 N. Beach Street, Suite 205
Daytona Beach, FL 32114	Daytona Beach, FL 32114

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

Section 11. 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 12. 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 13. 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 14. 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 15. 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 (2013), 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) 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.

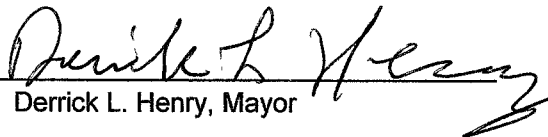
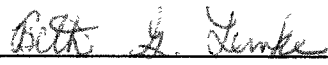
(m) Integration. This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

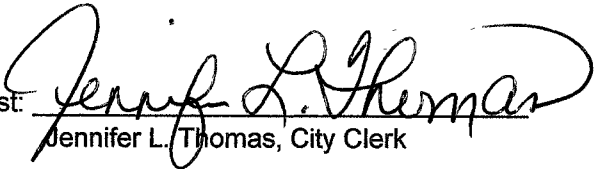
(n) **No Conflicts.** CONSULTANT affirms that to the best of CONSULTANT's knowledge there exists no conflict of interest, and every interest and every effort will be made to avoid the appearance of conflict of interest, between CONSULTANT, including CONSULTANT's family, business, or financial interests, 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

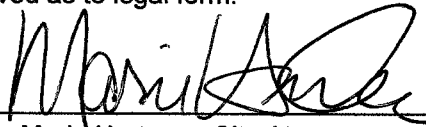
PLANNING SOLUTIONS CORP

By:  By: 
Derrick L. Henry, Mayor Beth G. Lemke, President

Attest:  Date: 8/4/2014
Jennifer L. Thomas, City Clerk

Date: August 6, 2014

Approved as to legal form:

By: 
Marie Hartman, City Attorney