

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

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Vanasse Hangen Brustlin, Inc., a foreign profit corporation ("CONSULTANT").

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

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

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

Section 2. Services Must Be Authorized in Writing. This Contract, in and of itself, does not require the CONSULTANT to perform any services or obligate the CITY to pay for any services rendered. No services will be provided under this Contract, and no payment obligation will arise for performance of services, except when specifically authorized by work authorization issued in accordance with the CITY's procurement policies. A work authorization may consist of a contract document signed by both the CITY and CONSULTANT; or it may consist of CONSULTANT's written quotation/proposal, identifying the work to be performed and the unit prices for such work, and the CITY's written acceptance of such quotation or proposal. No work authorization may alter the terms and conditions of this Contract. In case of a conflict with a work authorization this Contract will govern. The work authorization may provide more detailed parameters for the services to be provided, such as deliverables, deadlines, etc., consistent with the provisions of this Contract.

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

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

Section 3. Fees and Other Payments; Limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For work authorizations providing for not-to-exceed fees based on the hours worked, payment will be made based on the hours worked and billed during the monthly billing interval.

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

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

(e) The CITY will, within 30 days after receipt of an invoice, notify the CONSULTANT that the invoice is improper, or pay CONSULTANT the amount due.

Section 5. Standard of Performance. CONSULTANT's services will at a minimum meet the level care and skill ordinarily used by members of CONSULTANT's profession performing the type of services provided herein within the State of Florida.

Section 6. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONSULTANT. CONSULTANT is an independent CONSULTANT of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent CONSULTANT, CONSULTANT will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONSULTANT agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONSULTANT will also be responsible for the performance of CONSULTANT's sub-CONSULTANTS.

Section 7. Documents. All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONSULTANT during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required; or, if this Contract is terminated prior to completion of service, immediately upon termination.

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

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

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

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

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as

authorized by law until completion of the work required by a work authorization, and following such completion if CONSULTANT fails to transfer such records to the CITY.

(4) Upon completion of the work required by a work authorization, keep and maintain public records required by the CITY to perform the service. CONSULTANT will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

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

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

(b) Nothing herein will be deemed to waive CONSULTANT's obligation to comply with Section 119.0701(3)(a), Florida Statutes.

Section 9. Effective Date and Term.

The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 3 years, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 2 Terms of 1-year each, by providing CONSULTANT written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONSULTANT.

Section 10. Termination of Contract.

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

(1) Before terminating for convenience, CITY must provide CONSULTANT at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Except as provided in Section 10(a)(3), before terminating due to CONSULTANT's material breach of its contractual obligations, CITY must provide CONSULTANT prior written notice, specifying the breach and demanding CONSULTANT remedy the breach within 10 days of the notice, or within such longer period as may be

reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONSULTANT fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONSULTANT's breach without providing CONSULTANT an opportunity to remedy the breach as referenced immediately above, if CONSULTANT or any of CONSULTANT'S personnel, in connection with the services or rights provided herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONSULTANT written notice.

(b) If the termination is for convenience, CONSULTANT will be paid compensation for authorized services performed to the date of termination. If termination is due to CONSULTANT's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONSULTANT will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONSULTANT's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONSULTANT had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONSULTANT will be made as provided in Section 10(b) for a termination for convenience.

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

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

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

Section 12. Indemnification. The CONSULTANT hereby indemnifies and holds harmless the City from and against, all liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, arising out of or resulting from the Work

provided that the liabilities, damages, losses, and costs are caused in whole or in part by any negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

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. The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. 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 CONSULTANTS, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONSULTANT and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONSULTANT in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONSULTANT'S Commercial General Liability insurance policy shall provide coverage to CONSULTANT, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent CONSULTANTS, Property of CITY in CONSULTANT's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards

(XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

(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 equal to at least the first date of this agreement 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 above listed insurance coverages.

(b) **Proof of Insurance.** CONSULTANT will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONSULTANT will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONSULTANT will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, 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 to replace the canceled policy at CONSULTANT's expense if CONSULTANT fails to do so.

(d) **Termination of Insurance.** CONSULTANT may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONSULTANT has received written notification from the Risk Management Division of the CITY that CONSULTANT may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONSULTANT if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** CONSULTANT's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONSULTANT's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverages, or by CONSULTANT's failure to obtain insurance coverage.

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

Section 14. Reserved

Section 15. Notice. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

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

To CONSULTANT:
Paul Yeargain, Managing Director
225 E. Robinson Street, Suite 300
Orlando, FL 32801
Fax: 407-839-4008

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

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

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

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

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

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the CONSULTANT, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONSULTANT to facilitate coordination and ensure expeditious review of work product.

Section 18. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONSULTANT, will be construed to operate as a waiver of the CITY's rights under this Contract. CONSULTANT will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONSULTANT's negligent or wrongful provision of any of the services furnished under this Contract.

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

Section 19. Dispute Resolution.

If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) **Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the

mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

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

Section 20. General Terms and Conditions.

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

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

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

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

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

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

(g) **Nondiscrimination.** CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONSULTANT agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONSULTANT agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(h) **Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(i) **Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(j) **Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

(k) **Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(l) **Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(m) **Authority to Bind CONSULTANT.** The undersigned representative of CONSULTANT represents and warrants that he or she is fully authorized to bind CONSULTANT to the terms and conditions of this Contract.

(n) **Incorporation of RFP and Proposal.** The CITY's Request for Proposals 19225, and the CONSULTANT's responsive proposal are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between **Composite Exhibit C** and other provisions of this Contract, including **Exhibits A and B**, this Contract will govern.

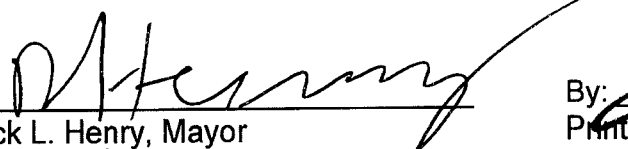
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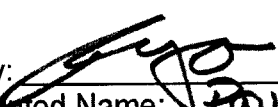
(o) **Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.


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

THE CITY


CONSULTANT

By: 
Derrick L. Henry, Mayor
Date: 9/19/19

By: 
Printed Name: Paul W Yeargan
Title: Managing Director
Date: 6-19-19

Attest: 
Letitia LaMagna, City Clerk

Approved as to legal form:

By: 
Robert Jagger, City Attorney

**EXHIBIT A:
SCOPE OF WORK
TRANSPORTATION PLANNING SERVICES**

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

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

- A. Geographic Information System (GIS) Database, and System Administration: The Consultant will develop Geographic Information System (GIS) applications and related databases utilizing the GIS software. The work may include development and/or acquisition of data sets for use with GIS; data transfer interfaces between native data format and the GIS format; data transfer interfaces between other applicable computerized formats and the GIS data format; and development/refinement of software subroutines to perform software integration, data manipulation, mapping, analysis functions through the GIS system. The work may require some system/process design, software expansion/refinements, database updates and integration, and documentation protocols.

- B. Roadway Characteristics Inventory (RCI): The Consultant will review/extract general highway data, using the Florida Department of Transportation RCI system, and enter this information into computer system/records for purposes of conducting the necessary task(s) for this study. The Consultant will assist the City with maintenance of this information on an on-going basis.

- C. Other Support: The Consultant will assist staff in preparing various mapping and graphics tasks for presentation or report purposes using ARC/VIEW, or other graphics software and techniques.

- D. Other Tasks: The Consultant may be required to assist the City performing the tasks itemized below. The Consultant will possess and maintain a thorough working knowledge of the City's roadway characteristics, existing levels of service and capacities, existing and project concurrency shortfalls, and overall concurrency management system.
 - 1. Review or prepare Traffic Impact Analyses;
 - 2. Review or prepare a multi-modal study or transportation alternative study;

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

Exhibit B: Fee Exhibit

Employee Class	Hourly Rate	Billable Rate
Principal in Charge	\$110.58	\$275
Project Manager	\$52.25	\$160
Project Engineer	\$47.98	\$150
GIS Specialist	\$49.47	\$150
Traffic Analyst	\$28.88	\$90
Traffic Technician	\$22.43	\$70
Clerical	\$27.75	\$90

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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/19/2019

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 have ADDITIONAL INSURED provisions or 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 Poole Professional Ltd. 107 Audubon Rd. #2, Ste. 305 Wakefield, MA 01880 Christopher A. Poole 781-245-5400	CONTACT NAME: Christopher A. Poole	
	PHONE (A/C, No, Ext): 781-245-5400	FAX (A/C, No): 781-245-5463
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Transportation Insurance Co		20494
INSURER B : Safety Insurance Company		39454
INSURER C : Continental Casualty Company		20443
INSURER D : Valley Forge Insurance Company		20508
INSURER E : XL Specialty Insurance Company		37885
INSURER F :		

INSURED
Vanasse Hangen Brustlin, Inc.;
VHB Eng. Surveying, Landscape
Arch. & Geology P.C.; Vanasse
Hangen Brustlin, LLC; VHB Eng.,
P.C.; VHB Metro DC, LLC
P.O. Box 9161
Watertown, MA 02471

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 INSP	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X	X	6018141932	05/01/2019	05/01/2020	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input checked="" type="checkbox"/> Contract Liab.						MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> Blanket Waiver						PERSONAL & ADV INJURY	\$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER							GENERAL AGGREGATE	\$ 2,000,000
POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG	\$ 2,000,000
OTHER							V. Papers	\$ 1,500,000
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY	X	X	6018203376	05/01/2019	05/01/2020	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY						BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY						BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> 1501873 MA						PROPERTY DAMAGE (Per accident)	\$
Safety NOH							Medical Expense	\$ 5,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB	X	X	6018203362	05/01/2016	05/01/2020	EACH OCCURRENCE	\$ 14,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE	\$ 14,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000							\$
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	6017185236	05/01/2019	05/01/2020	<input checked="" type="checkbox"/> PER STATUTE	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E L EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E L DISEASE - EA EMPLOYEE	\$ 1,000,000
							E L DISEASE - POLICY LIMIT	\$ 1,000,000
E	<input checked="" type="checkbox"/> Arch/Eng E & O			DPR9928347	07/19/2018	07/19/2019	Per Claim	5,000,000
	<input checked="" type="checkbox"/> Incl PollutionLiab						Aggregate	5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: VHB #82038.19 Transportation Planning Cont. Svcs.
Client Project #Contract No. 19225-VHB Transportation Planning Continuing Professional Services

See Attached

CERTIFICATE HOLDER		CANCELLATION	
CITYD12		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.	
City of Daytona Beach Attn: Joanne Flick 301 S. Ridgewood Avenue Room 146 Daytona Beach, FL 32114		AUTHORIZED REPRESENTATIVE 	

NOTEPAD:

HOLDER CODE CITYD12
INSURED'S NAME Vanasse Hangen Brustlin, Inc.;

VANAS-1
OP ID: CL

PAGE 2
Date 06/19/2019

RE: VHB #82038.19 Transportation Planning Cont. Svcs.
Client Project #Contract No. 19225-VHB Transportation Planning Continuing
Professional Services

The City of Daytona Beach, FLA is included as additional insured per
written contract under the general, auto, and umbrella liability policies
subject to same terms and conditions. Coverage is primary and non-
contributory. Waiver of subrogation applies to indicated policies in favor
of additional insured. 30 day notice of cancellation except 10 day notice
for non-payment of premium.