

CONTINUING PROFESSIONAL SERVICES CONTRACT CONTRACT NO. 0518-0540-PMA

THE PARTIES TO THIS CONTRACT are the CITY of Daytona Beach, a Florida municipal corporation (the "CITY"), and Parker Mynchenberg & Associates, 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 provide professional **Continuing General Municipal Professional Engineering 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 and the CITY's written document (such as a CITY Resolution or CITY purchase order) accepting such quotation/proposal. In either instance the work authorization should specifically reference and incorporate this Contract. 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 a 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) **Fees.** 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 Fees 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 Agreement.

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

(b) **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:

(1) 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.

(2) 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.

(3) 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; and 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

(4) Subcontractor 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. Any additional conditions set forth in Exhibit B 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 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 subcontractors or air travel), the invoice must include proof that CONSULTANT has paid such costs.

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

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

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

Section 7. Documents.

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

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

Section 8. Public Records.

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

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

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

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

(4) Upon completion of the work required by a specific 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 last signature date set forth below (the "Effective Date. The Term of this Contract is 2 years, commencing on the Effective Date.

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

Section 10. Termination of Agreement

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

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

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

(b) If the termination is for the CITY's convenience, CONSULTANT will be paid compensation for authorized services performed through termination in accordance with this Contract and the notice of termination.

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

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

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

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

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

Section 12. Indemnification. CONSULTANT will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the CONSULTANT's negligent acts or omissions, or reckless or intentionally wrongful conduct in the performance of this Contract. For purposes of this Section, the term, "CONSULTANT," includes CONSULTANT's officers, employees, and agents, including subcontractors and other persons employed or used by CONSULTANT. This indemnification is in no way limited by any insurance provided by CONSULTANT.

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

(a) Coverage and Amounts.

(1) Workers Compensation Insurance as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONSULTANT, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

(2) Liability Insurance, including (i) Commercial General Liability coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONSULTANT and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and **(ii) Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle used by the CONSULTANT

in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONSULTANT's Commercial General Liability insurance policy shall provide coverage to CONSULTANT, and City when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of City in CONSULTANT's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

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

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

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

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

(b) Proof of Insurance. CONSULTANT will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONSULTANT will not commence work until all proof of all required insurance has been filed with and approved by the CITY. CONSULTANT will furnish such proof in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

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

(c) Cancellation; Replacement Required. CONSULTANT will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONSULTANT's prior knowledge CONSULTANT will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right or replace the canceled policy at CONSULTANT'S expense if CONSULTANT fails to do so.

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

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

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

Section 14. Notices. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, 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:
David Waller, Deputy Public Works Director
Daytona Beach Public Works
950 Bellevue Ave.
Daytona Beach, FL 32114
Fax: 386-671-8620

To CONSULTANT:
Parker Mynchenberg, President
Parker Mynchenberg & Associates, INC.
1729 Ridgewood Ave.
Holly Hill, FL 32117
Fax: (386)677-2114

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

Section 15. Personnel. In order to induce the CITY into entering this Contract, CONSULTANT represents that Steven R. Buswell, PE, RLA, will generally perform or directly supervise the tasks assigned to CONSULTANT herein, and that CONSULTANT will not replace Steven R. Buswell, PE, RLA, 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.

The CITY will have the right to approve or reject any subcontractors that CONSULTANT proposes to use for work assigned.

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

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

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

Section 18. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any other judicial remedies.

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

(b) Non-Binding Mediation. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the Subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend 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 19. General Terms and Conditions.

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

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

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

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

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

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

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

(h) **Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate.

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

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

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

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

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

(n) **Incorporation of RFP and Proposal.** The CITY's Request for Proposals 0518-0540 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

PARKER MYNCHENBERG & ASSOCIATES, INC.

By: _____
Derrick L. Henry, Mayor

By:  _____

Printed Name: PARKER MYNCHENBERG, PRES

Attest: _____
Letitia LaMagna, City Clerk

Title: President

Date: _____

Date: 7-6-18

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

EXHIBIT A

SCOPE OF SERVICES

CONTINUING GENERAL MUNICIPAL PROFESSIONAL ENGINEERING SERVICES

Background:

The City is soliciting General Municipal Professional Civil Engineering Services to include but not necessarily be limited to preliminary engineering, general engineering design and associated post-design support services and infrastructure master-planning with a special emphasis on urban surface infrastructure. The selection of one or more Consultants is anticipated. All Consultants will be licensed to do business in the State of Florida. This will be a 2 year contract with three renewal options of one year each. As the need for engineering services arises, the Consultant will be contacted to discuss the desired project outcome and subsequently provide a scope of work and a fee proposal for each project assignment. A Work Authorization will be issued by the City upon acceptance of a mutually acceptable scope of services, schedule, and fee proposal.

The Consultant's work will be performed by the key personnel at the office location identified in the proposal and the primary sub consultant's identified for services such as surveying, geotechnical evaluations or other specialty engineering support functions. Any changes of personnel or sub consultants will be reviewed and will require approval by the City in writing prior to the issuance of a Work Authorization.

Scope of Services:

The Consultant will perform the following: general Municipal civil engineering services to include but not be limited to preliminary engineering/system planning design, needs assessments of existing surface infrastructure and master-planning, post-design services, permitting, analysis, and construction inspection of their designed projects as needed. Services may include, but not be limited to, the following as authorized by individual Work Authorizations for projects:

- General civil engineering design services for urban surface infrastructure work that is in compliance with various both non-governmental and governmental Grant Agency requirements.
- Preliminary engineering/system planning analysis, design development, construction plans preparation, permitting and creation of construction bid documents, including special conditions/provisions and specifications for City projects.
- Analysis of existing infrastructure conditions in City rights of way, buildings and parking facilities, connectivity to public places and neighborhood impacts.
- Bidding and construction phase services including:
 - Answering questions during the bidding process
 - Assuring project compliance with Grant Agency requirements

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

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

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

- The Consultant and appropriate project team members will meet with public and private utility providers in the area to confirm existing utility locations and conflicts.
- The Consultant will identify all permitting /regulatory agencies, determine permitting requirements, prepare submit and respond to all requests for information regarding the permit applications and provide the necessary information to secure approved permits. The City will pay the permitting agencies required application fee.
- The Consultant will work with the City's project manager and legal department to evaluate the impact of the design on adjacent properties.
- The Consultant will produce design development drawings to perform modifications and describe the overall character and extent of the project. Drawings will include plans, elevations, and sections.
- Design development may include site inspections required to confirm site plan and records of utilities and other relevant features at the project site as they relate to the project design including compliance with FDOT LAP design requirements and design review process.
- The Consultant will prepare complete design development plans to address revisions as necessary based upon comments received during City and agency reviews.
- The Consultant will prepare alternatives for the sequencing, planning and timing of construction, and the maintenance of traffic for consideration by the City.
- The Consultant will prepare a statement of probable construction costs, phasing, value engineering alternatives, and viable construction methods as necessary.
- The Consultant will prepare utility conflict sheets at 30%. The Consultant will prepare alternatives to resolve utility conflicts and costs associated with each alternative.
- Construction Documents
 - The Consultant will prepare construction documents at a true and suitable scale for all items described above including demolition of existing features to be removed, civil and landscape architectural plans, and permit applications and permit drawings which are appropriate for public bidding.
 - The Consultant will present the construction documents to appropriate project members and City department at 30%, 60%, and 90% completion for review and approval.
 - The Consultant will coordinate and assemble technical specifications, design cover sheet and prepare an itemized bid schedule.
 - The Consultant will coordinate with appropriate project team members to ensure that all City required documents are assembled as a complete bid package that is compliant with County and other various Grant Agency requirements both governmental and non-governmental
- Local Government and Other Agency Coordination
 - The Consultant will coordinate their design activities with the above listed groups to ensure adequate opportunity on their behalf to address design

and construction issues and provide information that will aid in the design and alleviate duplication of effort and construction.

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

- Final reports/studies/plans in the form of three (3) bound Preliminary Engineering or Technical Recommendation Memorandums that address analysis of need and project alternative approaches, with signed and sealed original documents. All elements of the reports will be provided on a CD in applicable format to include .pdf, word, .dwg and .jpg formats.
- Final construction documents and all related project correspondence, reports and permits will be to true scale for the paper size used and saved on CD in 24" x 36".pdf, 11"x17" .pdf format and AutoCAD format and/or other version as determined by the City.
- Final construction plan deliverables including four (4) signed and sealed, bound sets of plans on 24" x 36" sheets, along with four sets of specifications, and one (1) set of final construction plans on 24" x 36" mylar. Specifications will be provided in Word; bid schedules in an Excel spreadsheet and both specifications and bid schedules in pdf format
 - Testing results will be forwarded to the City at an interval to be determined, in a bound notebook with synopsis of results and outstanding issues noted on the cover page.
 - All geo-spatial information including plans, surveys, maps, and aerial photography will be provided in AutoCAD or the ESRI Personal Geodatabase format. This data will be referenced by a minimum of three (3) coordinates in the Florida State Plane Coordinate System, East Zone in US Survey Feet. The horizontal datum is NAD83/(1990) HARN and the vertical datum is NAVD 88 Feet, in accordance with Florida Statutes, Chapter 177.151.
 - AutoCAD files will follow the City's AutoCAD standard presentation format.
 - All text and graphic information will be provided in the City standard MS Office software (MS Word, MS PowerPoint, etc.) and in the Adobe .PDF format, unless otherwise specified. This digital information is also to be provided on CDs or DVDs.
 - The Consultant will provide the as-built drawings in AutoCAD standard. The red-lined as-builts will be supplied by the Contractor so that final drawings and specifications can be developed for project close-out.

Exhibit B: Fee Exhibit

HOURLY RATE SCHEDULE

Employee	Position	Raw Hourly Rate	Multiplier	Billable Rate	Discount	Final Rate
Parker Mynchenberg	(Project Manager)	\$105.77	2.47	\$261.25	23.45%	\$200.00
Steve Buswell	(Project Engineer)	\$77.88	2.47	\$192.36	9.03%	\$175.00
Bruce Harnden	(Senior CAD Technician)	\$36.50	2.47	\$90.16	0.17%	\$90.00
Multiple	(Administrative Assistant)	\$20.27	2.47	\$50.07	0.13%	\$50.00

STANDARD RATE FOR MISCELLANEOUS EXPENSES

PRINTS

24"x36" \$2.20/ea.
 30"x42" \$2.25/ea.
 36"x48" \$3.00/ea.
 42"x60" \$4.50/ea.

REPRODUCIBLES

Mylar \$12.00/ea.

COPIES

8.5"x11" \$0.06/ea.
 11"x17" \$0.09/ea.
 8.5"x11"(Color) \$0.15/ea.
 11"x17"(Color) \$0.20/ea.

OTHER

Mileage \$0.545/mile
 Postage Current Rate
 Phone Calls As Billed

This schedule is certified true and correct by:

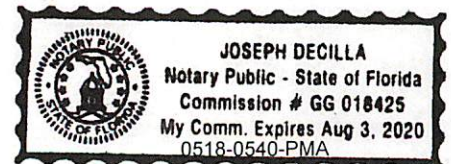
Donna Mynchenberg, Secretary Parker Mynchenberg & Assoc. Inc., The forgoing instrument acknowledged
 Donna Mynchenberg, Secretary Parker Mynchenberg & Assoc. Inc.

before me this 28 day of June, 2018 by Donna Mynchenberg, Secretary of

Parker Mynchenberg & Associates, Inc.

Stamp of Notary:

Joseph Decilla
 Signature of Notary



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)

07/05/2018

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 N. T. Vincent Insurance P.O. Box 1711 Daytona Beach FL 32115-1711 Phone 386- 258-1515 / Fax 386- 258-5271	CONTACT NAME: D. Glenn Vincent, CPCU														
	PHONE (A/C, No, Ext): 386-258-1515	FAX (A/C, No): 386-258-5271													
	E-MAIL ADDRESS: glenn_vincent@msn.com														
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Foremost Signature Insurance Company</td> <td>41513</td> </tr> <tr> <td>INSURER B : Foremost Insurance Company</td> <td>11185</td> </tr> <tr> <td>INSURER C : Axis Insurance Company</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Foremost Signature Insurance Company	41513	INSURER B : Foremost Insurance Company	11185	INSURER C : Axis Insurance Company		INSURER D :		INSURER E :		INSURER F :
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INSURER E :															
INSURER F :															

INSURED

Parker Mynchenberg & Associates, Inc.
 1729 Ridgewood Avenue
 Holly Hill, FL 32117
 386-677-6891 Fax: 386-677-2114

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS							
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	X	PAS 04303410	10/05/18	10/05/19	EACH OCCURRENCE	\$ 1,000,000						
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$ 1,000,000							
	MED EXP (Any one person)						\$ 10,000							
	PERSONAL & ADV INJURY						\$ 1,000,000							
	GENERAL AGGREGATE						\$ 2,000,000							
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:							PRODUCTS - COMP/OP AGG	\$ 2,000,000						
\$														
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	PAS 04303410	10/05/18	10/05/19	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000						
								BODILY INJURY (Per person)	\$					
								BODILY INJURY (Per accident)	\$					
								PROPERTY DAMAGE (Per accident)	\$					
	\$													
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			PAS 04303410	10/05/18	10/05/19	EACH OCCURRENCE	\$ 2,000,000						
								AGGREGATE	\$ 2,000,000					
								DED <input checked="" type="checkbox"/> RETENTION \$10,000						
	\$													
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WC 03556315 06	04/06/18	04/06/19	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER							
								E.L. EACH ACCIDENT	\$ 1,000,000					
								E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000					
								E.L. DISEASE - POLICY LIMIT	\$ 1,000,000					
C	Professional Liability			AEA001152012018	06/20/18	06/20/19	\$1,000,000	Each Claim Aggregate						
									\$2,000,000					

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

Certificate holder is named as an additional insured

CERTIFICATE HOLDER

CANCELLATION

City of Daytona Beach P.O. Box 2451 Daytona Beach, FL 32115 Phone: (386)671-8222 Fax: (386)671-3257	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE:
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CITY OF DAYTONA BEACH

RISK MANAGEMENT DIVISION

P. O. Box 2451

Daytona Beach, FL 32115

Phone: (386) 671-8222

Fax: (386) 671-3257

Memorandum

To: Letitia LaMagna, City Clerk
From: Bob Flaniken, Sr. Account Clerk *BF*
Date: July 6, 2018
Re: Contract No. 0528 – 0540 - PMA

Attached is a copy of contract number 0528 – 0540 - PMA with Parker Mynchenberg and Associates, Inc. (Continuing municipal professional engineering services). I have reviewed the evidence of insurance submitted with the contract, and I find it to be satisfactory.

Attachments