

CONTRACT FOR INSTALLATION AND OPERATION OF BUS BENCHES AND RELATED AMENITIES

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Creative Outdoor Advertising ("CONTRACTOR").

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

Section 1. DEFINITIONS. Certain words and phrases as used in this Contract will have the meanings ascribed below. Other words not defined below will have the meaning ordinarily ascribed, unless the context clearly indicates otherwise.

ADA means the Americans with Disabilities Act, including the ADA Standards for Accessible Design.

Amenity means an ADA-compliant bus bench or bus shelter unit installed by CONTRACTOR pursuant to this Contract, including mounting slab, ADA-accessibility slab, and all other fixtures installed by CONTRACTOR in accordance with this Contract.

Amenity Site means the specific property on which the CITY authorizes CONTRACTOR to install, maintain, and operate an Amenity pursuant to this Contract. The term is intended to be co-extensive with the term, "License Area," as to any specific Amenity.

Bus Stop means a VOTRAN--designated-public bus or public transit stop located on public right-of-way within the City limits.

City Code means the Daytona Beach Code of Ordinances. Any reference to any provision of the City Code will include references to such provisions as they may be hereafter amended.

City Manager means the City Manager or his designee.

CITY RFP or *RFP* means the CITY's Request for Proposals 0118-0040, attached hereto and incorporated herein as **Exhibit A**.

CONTRACTOR's Proposal means CONTRACTOR's written proposal submitted in response to the RFP, which is attached hereto and incorporated as **Exhibit B**.

Contract means this Contract, inclusive of **Exhibits A, B, and C**. In case of any conflicts between this Contract and any **Exhibit**, the most stringent requirement will apply except where specifically provided otherwise.

Governmental Authority means any federal, state, or local governmental agency having jurisdiction over the permitting or approval of the installation, operation, maintenance, repair, or removal of the Amenities pursuant to this Contract. This term includes the CITY.

Governmental Requirements mean laws, regulations, and permitting requirements of any Governmental Authority. The term includes all applicable CITY ordinances, regulations, and policies.

Initial Amenity Site Map is the map, attached hereto and incorporated herein as **Exhibit C**, depicting the proposed Amenity Sites (subject to final CITY approval) where CONTRACTOR intends to initially install Amenities in accordance with the terms and conditions of this Contract.

License Area means the area in which CONTRACTOR is authorized to install, maintain, and operate an Amenity pursuant to this Contract. The term is intended to be co-extensive with the term, "Amenity Site."

NCF Permit means a non-communications facilities permit required pursuant to Article III of Chapter 86 of Article III of Chapter 86 of the City Code, containing the City's applicable regulations for activity within the public right-of-way.

Restoration Standard means restoration of the Amenity Site to a condition that matches and is compatible with adjacent properties.

VOTRAN means the Volusia County Public Transit System, an agency of Volusia County; or any successor entity having authority to operate a mass transit system within City limits.

Section 2. SCOPE OF SERVICES. CONTRACTOR will install, operate, and maintain bus benches and bus shelters ("Amenities") at official VOTRAN Bus Stops located within the CITY. CONTRACTOR will perform these services in accordance with the terms and conditions of this Contract, including all referenced Exhibits. In performing the services referenced herein, CONTRACTOR will comply with all applicable Governmental Requirements imposed by Governmental Authorities. All Amenities provided by CONTRACTOR pursuant to this Contract will remain the property of CONTRACTOR, unless abandoned.

Section 3. EFFECTIVE DATE AND TERM; RENEWAL. The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 5 years, commencing on the Effective Date; provided, however, that the Term will be extended by one day for each day prior to CITY's issuance of the first NCF Permit for installation of an Amenity. The CITY will have the option to renew this Contract for up to 2 Terms of 1 year each, by providing CONTRACTOR written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONTRACTOR. Nothing in this Section will prohibit the termination of this Contract prior to the end of a Contract Term as referenced below.

Section 4. INSTALLATION OF AMENITIES. The Amenities will be installed, operated, and maintained in, on, and upon certain Amenity Sites within the CITY limits in accordance with this Contract. CONTRACTOR's installation, operation, maintenance, and removal of the Amenities will comply with all terms and conditions of this Contract, including the following:

(a) **Amenity Site Requirements.** CONTRACTOR will install and operate Amenities solely on Amenity Sites approved by the City Manager on behalf of the CITY. The City Manager may approve or reject any proposed Amenity Site, provided that the City Manager will not unreasonably withhold approval. Among other factors, the City Manager is authorized to reject any proposed Amenity Site on the basis that it would conflict the requirements of this Contract, including the provisions of the CITY RFP (**Exhibit A**) and CONTRACTOR's Proposal (**Exhibit B**).

(1) Except as provided below, the area of each Amenity Site will be restricted to public right-of-way under the CITY's control or jurisdiction (including, where applicable, public right-of-way owned or controlled by a federal, state, or county governmental agency upon the approval of such agency where such approval is required.

(2) An Amenity Site may encroach onto adjoining private property only with the City Manager's express prior approval. As a condition the City Manager may require CONTRACTOR to obtain written proof of the adjoining property owner's consent; and may also require recordation of a written instrument evincing such adjoining property owner's consent; provided, however, that the adjoining property owner's consent will not alter or diminish the CITY's right to require CONTRACTOR to remove an Amenity from the location in question. Under no circumstances will CONTRACTOR hold itself out as representing the CITY in seeking to obtain approval or consent of the owner of the adjoining private property.

(b) **Amenity Design and Construction Standards.** CITY has elected to use "The Avenue" design for all bus benches to be installed by CONTRACTOR, and the "HH-V Shelter" design for all bus shelters to be installed by CONTRACTOR. The quoted terms are referenced and depicted in the CONTRACTOR's Proposal. Regardless of the CITY's selection of these specific design types, all Amenities will be constructed of high quality, durable, water resistant, low maintenance materials suitable for the local

environment and climate; and will be designed, secured, and installed to avoid the possibility of tipping over. The Amenities will also meet the design and construction standards specified in the RFP (**Exhibit B**), including Article V thereof; and the design and construction standards referenced in CONTRACTOR's Proposal (**Exhibit C**) to the extent not conflict with this Contract or the RFP. In constructing an Amenity CONTRACTOR will also construct a pad and related improvements, such as, applicable, ramps, as needed for the Amenity to meet all Governmental Requirements, including accessibility requirements under the ADA; subject to the conditions below. CONTRACTOR will not be required to construct slabs greater than 60 square feet for bus benches, and 90 square feet for bus shelters, except when strictly required in order to meet ADA requirements, or permitting requirements of a third-party Governmental Authority.

(c) **Minimum Number of Amenities; Initial Installation.** CONTRACTOR will submit completed permit applications for the Minimum Number of Amenities (i.e., at least 40 bus benches and 5 bus shelters within 20 days after the Effective Date. CONTRACTOR will obtain all required permits for the Minimum Number of Amenities within 90 days after the Effective Date (subject to delays approved by the CITY due to Force Majeure conditions as referenced below). CONTRACTOR will complete installation of at least the Minimum Number of Amenities within 90 days after the permits for the Initial Amenities have been issued. CONTRACTOR will continue to operate and maintain at least the Minimum Number of Amenities until this Contract expires or terminates.

(d) **Additional Amenities; Relocation and Removal of Existing Amenities.**

(1) *CONTRACTOR Rights.* CONTRACTOR may at any time request City Manager approval of the installation of Amenities in addition to the Minimum Number of Amenities referenced above, or alternatively, for the relocation or removal of one or more existing approved Amenities, by providing written notice to the City Manager. The City Manager will be authorized to approve or reject the request, subject to the terms and conditions herein. The requirements of the RFP will apply to such requests.

(2) *CITY's Rights.*

A. At any time during the First Year of the Contract, the City Manager may require CONTRACTOR to install bus benches over and above the 40 benches included in the Minimum Number referenced above, or relocate previously permitted bus benches. CONTRACTOR will install the additional bus benches, or relocate the permitted bus benches, receipt of the City Manager's notice, subject to Force Majeure conditions referenced below.

B. After the First Year of the Contract, the City Manager may at any time request the CONTRACTOR to relocate an existing bus bench. CONTRACTOR may accept or decline such request. Among other factors used by CONTRACTOR in determining whether to accept or decline such request, CONTRACTOR may reject the request if CONTRACTOR reasonably determines that CONTRACTOR will not be able to sell sufficient advertisements on the new or relocated bus bench; and also whether CONTRACTOR may be require to expend extraordinary costs in constructing or modifying a pad for the bench, Such costs will be deemed to be extraordinary whenever the size of the required pad would be larger than 60 square feet.

(3) *Amenity Site Restoration.* Whenever CONTRACTOR removes or relocates an Amenity under this Contract, CONTRACTOR will remove all fixtures including concrete pad, and restore the Amenity Site to the Restoration Standard as defined herein. If CONTRACTOR fails to comply with these requirements, the CITY may remove the same, and restore the Amenity Site to the Restoration Standard. In such instance, CONTRACTOR will be deemed to have abandoned such fixtures and CITY will be entitled to recover CITY's cost of removal, storage, and disposition of fixtures, and restoration.

Section 5. OPERATION, MAINTENANCE, REPAIR, AND REMOVAL OF AMENITIES. CONTRACTOR will operate all Amenities and all Amenity Sites in accordance with the following conditions.

(a) **CONTRACTOR'S Right to Place Advertising on Amenities.** **Exhibit A** describes the permissible location and maximum size of the advertising displays space authorized for the Amenities.

CONTRACTOR will have the right to lease these advertising display spaces for the display of static advertising. CONTRACTOR will strictly comply with the content restrictions and other requirements regarding advertising as described in **Exhibit A**. In addition, all advertising installed into the advertising display spaces will be of a non-permanent type, i.e., "direct application." CONTRACTOR will ensure that all advertisements are manufactured, installed and removed in accordance with current industry standards and in such a way as to preserve the original appearance and condition of the surface of the advertising display space on which the advertisement is placed. Additionally, each ad will present a sharp, clear, high-quality appearance at all times, regardless of the duration of the advertisement. No layering of one ad upon another will be permitted.

The City Manager may elect to require CONTRACTOR to receive written approval on all proposed advertisements prior to CONTRACTOR's placement of the advertisements on the Amenities, in order to ensure compliance with this Subsection. The City Manager will give CONTRACTOR written notice if the City Manager elects to impose this requirement.

The City Manager also has the right to require CONTRACTOR to remove advertising under the conditions further described in the RFP.

(b) **CITY's Right to Use Amenity Advertising Spaces for Public Service Announcements.** In addition, whenever the approved advertising display spaces on an Amenity are not currently in use by CONTRACTOR for the display of static advertising, CONTRACTOR will permit the CITY to post static public service announcements free of charge. CITY will be responsible for the costs of printing all such public service announcements, and will be solely responsible for the content of these public service announcements.

(c) **CONTRACTOR to Clean, Maintain, and Repair.** At all times, CONTRACTOR will keep and maintain the Amenity Sites and the Amenities in good condition, consistent with the requirements of the RFP. This includes regularly-scheduled cleaning and maintenance activities described in Article V.A.8. of the RFP. This also includes repairing or replacing Amenities that have been damaged or defaced promptly whenever CONTRACTOR notices the need for same; or within 24 hours after receipt of CITY's notice of damage or defacement.

(d) **CITY's Right to Remove Advertising/Amenities.** Regardless of whether CONTRACTOR disputes the City Manager's order to remove advertising or an Amenity pursuant to this Contract, CONTRACTOR will comply with such order pending resolution of the dispute. If CONTRACTOR fails to comply with such order, the CITY will have the right to remove the Amenity at CONTRACTOR's sole cost and expense.

(e) **Abandonment of Amenity.** If, after CITY has caused the removal of an Amenity as authorized by this Contract and provided CONTRACTOR the notice required by Section V.B. of the RFP, CONTRACTOR fails to pay the costs assessed by the CITY in accordance with said Section, CONTRACTOR will be deemed to have abandoned all title to and interest in the Amenity; but will remain responsible for the costs billed by the CITY as further provided in said Section.

(f) **Police Powers Not Waived.** Nothing herein will be deemed to waive the CITY's police powers. CONTRACTOR acknowledges that such powers include authority to require relocation, removal, or alteration of an Amenity, or to relocate, remove, or alter an Amenity at CONTRACTOR'S cost and expense, as referenced in § 86-146 of the City Code.

Section 6. GRANT OF LICENSE. Solely for the purpose of installing, maintaining, and removing the Amenities at Amenity Sites in accordance with this Contract, the CITY hereby grants CONTRACTOR a license to use and occupy a portion of the non-vehicular-travelled portions of certain public rights-of-way within the CITY's jurisdiction that are within the CITY's jurisdiction and control. The area licensed (hereinafter, the "License Area") will generally consist of the footprint of the Amenity itself, and the non-vehicular-travelled portion of the right-of-way surrounding the Amenity, up to a distance of 3 feet; and the NCF Permit may more specifically describe the contours of the License Area. This license is non-exclusive

and will not prohibit the CITY from authorizing other uses of the public right-of-way as authorized by law, including the provisions of any utility franchise. This license will automatically terminate with respect to any specific Amenity if the NCF Permit authorizing the Amenity is terminated; or, as to all Amenities, if upon the termination of this Contract. The license granted is in each instance subject to CONTRACTOR's strict compliance with all of the terms and conditions of this Contract and any NCF Permit issued. No property interest is conveyed by this Contract. The CITY does not warrant the suitability of a License Area or any Amenity Site as suitable for CONTRACTOR's intended use.

Section 7. COMPENSATION; LICENSE FEE; BOOKS AND RECORDS.

(a) **CONTRACTOR's Compensation.** CONTRACTOR's sole compensation for the services required herein will be derived from the revenues received by CONTRACTOR from CONTRACTOR's sale of advertising on advertising displays located on the Amenities. CONTRACTOR will have no right to charge the CITY, and CITY will be under no obligation to pay CONTRACTOR, for any of the services performed by CONTRACTOR herein.

(b) **License Fee.** CONTRACTOR will pay the CITY a monthly License Fee for each Amenity located within a License Area at any time during the previous calendar month. This License Fee will be owed regardless of whether CONTRACTOR had advertising located on the Amenity for the previous month. CONTRACTOR will pay this License Fee no later than the 90th day following the calendar month, without need for an invoice or demand from CITY. The License Fee is \$18.00 per advertising bench and \$10 per advertising shelter. When submitting the License Fee, CONTRACTOR will also submit a written report identifying each Amenity by location and including any Amenities that were removed or installed during the month, including date(s).

(c) **Books and Records.** CONTRACTOR agrees to keep complete, accurate and up-to-date records of all business conducted by it in relation to the sale of advertising as authorized by this Contract, to maintain such records and to include such records as may be necessary with its regular payments to CITY. CITY will have the right to audit CONTRACTOR's books and accounts relevant to this CONTRACT. If CITY elects to make such an audit, CONTRACTOR will make all appropriate books, records and accounts, including records maintained for payments made to CITY available within 30 days of CITY's written request. CONTRACTOR must preserve all appropriate books, records, and accounts generated during the entire Term of this Contract, including any renewal Terms, and for 3 years thereafter.

Section 8. STANDARD OF PERFORMANCE. CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

Section 9. RELATIONSHIP BETWEEN PARTIES. This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR 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, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR 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. CONTRACTOR will also be responsible for the performance of CONTRACTOR's subcontractors.

Section 10. PUBLIC RECORDS.

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.07, 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 CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR 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 CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes.

Section 11. TERMINATION OF CONTRACT.

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

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 90 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 11(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if, in connection with this Contract, CONTRACTOR or any of CONTRACTOR'S personnel commit or attempt to commit a criminal act, or commit a material breach of this Contract which poses an imminent threat to public health, safety, or welfare, or material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(b) Termination by CONTRACTOR.

(1) CONTRACTOR may terminate this Contract for convenience by providing the CITY 180 days' notice.

(2) CONTRACTOR may terminate this Contract because of the CITY's material failure to meet CITY's obligations under this Contract. Before terminating due to CITY's material breach of its contractual obligations, CONTRACTOR must provide CITY prior written notice, specifying the breach and demanding CITY remedy the breach within 30 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 30 days of notice. If the CITY fails to remedy the breach within the time period provided by such notice, CONTRACTOR may terminate this Contract by providing CITY second written notice. Termination will be effective upon delivery of such notice.

Upon termination, the CITY reserves the authority provided in Article III of Chapter 86 of the City Code, and reserves all other rights and remedies the CITY may have due to such breach.

(c) Removal of Amenities Upon Termination.

(1) Except as provided below in Paragraph (2) below, within 90 days of termination of this Contract by either Party, CONTRACTOR will remove all Amenities and restore all Amenity Sites to the Restoration Standard as defined herein. If CONTRACTOR fails to comply with these requirements, CONTRACTOR will be deemed to have abandoned the Amenities. In such instance the CITY will be entitled to remove the Amenities and restore the Amenity Sites to the Restoration Standard, and to assess CONTRACTOR for CITY's costs of performing these activities. If CONTRACTOR fails to pay the costs assessed within 90 days of the CITY's invoice, CONTRACTOR will be deemed to have abandoned all title to and interest in the Amenities but will remain responsible for the costs assessed by the CITY.

(2) If CITY terminates this Contract for convenience pursuant to Section 11(a), above, CONTRACTOR may elect to convey to the CITY, all Amenities that have been installed by CONTRACTOR and that are at the time of termination still located the right-of-way in accordance with this Agreement. CONTRACTOR must make this election by providing written notice thereof to CITY within 30 days after receiving CITY's notice of termination for convenience. Along with the notice of such election CONTRACTOR will provide the CITY a bill to take over ownership of the concrete pads and bus shelters installed under this Agreement. The bill will be based on an amount of \$22.00 per square foot for each pad constructed by CONTRACTOR in the course of constructing such Amenities, plus the depreciated value of each bus shelter constructed by CONTRACTOR (with original value being set at \$7,500 per shelter), declining at a rate of 10% per year since the date of installation.

Within 30 days of receiving CONTRACTOR's timely notice of such election, CITY may rescind the notice of termination for convenience by providing CONTRACTOR written notice of such rescission. If CONTRACTOR has made such timely election and CITY does not thereafter rescind such cancellation within the time frame provided, then termination for convenience will proceed and CONTRACTOR will be relieved of responsibility for restoration of the Amenity Sites.

Section 12. SUSPENSION OF SERVICES. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 11(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 11(a)(3), by providing CONTRACTOR written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

Section 13. INDEMNIFICATION. CONTRACTOR 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 negligence, recklessness, or intentionally

wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or used by CONTRACTOR in the performance of this Contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY herein, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within 7 business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory council of its own selection and at its own expense, without waiving the foregoing rights referenced in this Section.

Section 14. INSURANCE. CONTRACTOR will provide and maintain at CONTRACTOR'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 CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy will provide coverage to CONTRACTOR, 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 Contractor'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 will 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.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the Insurer will waive its rights of subrogation, if any, against the CITY on each of the types of required insurance

coverage listed above.

(b) **Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR 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, CONTRACTOR 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.** CONTRACTOR 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 CONTRACTOR's prior knowledge CONTRACTOR 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 CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) **Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Manager that CONTRACTOR 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 CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR'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 CONTRACTOR's failure to obtain insurance coverage. CONTRACTOR 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 CONTRACTOR that does not meet the requirements of this Contract.

(f) **Risk Manager.** All references to the Risk Manager will be deemed to include the Risk Manager's designee.

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, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY: Mark Pincket Technical Services Contract Manager 950 Bellevue Avenue Daytona Beach, FL 32114	To CONTRACTOR: David Gray President 8875 Hidden River Parkway, Suite 300 Tampa, FL. 33637
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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.

Section 16. TAXES AND ASSESSMENTS. CONTRACTOR acknowledges that, while CITY's intent is not to create a taxable leasehold interest in favor CONTRACTOR, the CITY is not the Governmental Authority empowered to determine whether such interest is taxable under Florida law. Should any Governmental Authority (other than the CITY or an agency acting on behalf of the City) assess any taxes or assessments in association with this Contract or the rights granted to CONTRACTOR herein,

CONTRACTOR will be solely liable for payment of such taxes or assessments. Nothing herein will be deemed to prohibit CONTRACTOR from contesting the imposition of such taxes or assessments as authorized by law.

Section 17. PERSONNEL. CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

Section 18. CITY'S RESPONSIBILITIES. The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

Section 19. LIMITATION ON WAIVERS. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR 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 CONTRACTOR'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 20. 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 21. 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.

(b) **No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR's services under this Contract. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract. CONTRACTOR further warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to immediately annul this Contract without liability.

(c) **Bankruptcy.** Contractor agrees that if any execution or legal process is levied upon its interest in this Contract, or if any valid liens or privileges are filed against its interest, or if a petition in bankruptcy is filed against it, or if it is adjudicated bankrupt in involuntary proceedings, same shall constitute a material breach of CONTRACTOR's obligations under this Contract.

(d) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion sex, national origin, disability, age, or veteran status. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion sex, national origin, disability, age, or veteran status sex. Further, CONTRACTOR 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, disability, age, or veteran status. In particular, CONTRACTOR 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.

(e) **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.

(f) **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.

(g) **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.

(h) **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.

(i) **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.

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

(k) **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

By: _____

Derrick L. Henry, Mayor

Date: _____

Attest: _____

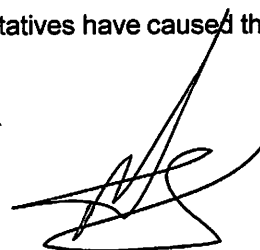
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____

Robert Jagger, City Attorney

CONTRACTOR



By: _____

Printed Name: _____ David Gray

Title: _____ President

Date: _____ 7/Oct/2018

EXHIBIT A: RFP

Check public records for RFP number 0118-0040.