

GENERAL SERVICES TERM CONTRACT CONTRACT NO. 19111

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Bryson Crane Rental Service, LLC, a Florida Limited Liability Company ("CONTRACTOR").

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

Section 1. Scope of Services. CONTRACTOR will provide crane rental 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 CONTRACTOR 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 CONTRACTOR; or it may consist of CONTRACTOR's written quotation/proposal, identifying the work to be performed and the unit prices for such work, and the CITY's written acceptance of such quotation or proposal. No work authorization may alter the terms and conditions of this Contract. In case of a conflict with a work authorization this Contract will govern. The work authorization may provide more detailed parameters for the services to be provided, such as deliverables, deadlines, etc, consistent with the provisions of this Contract.

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

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

Section 3. Fees; Unit Price Schedule; Adjustments.

(a) Unless the Exhibits specifically provide for reimbursement of expenses, the Fees described herein will be CONTRACTOR's sole compensation for the services to be provided.

(b) Subject to adjustments that may be provided pursuant to Section 3(c), the CITY will pay CONTRACTOR an amount not to exceed \$75,650 annually, based on the Fee Schedule attached as **Exhibit B**.

(c) CONTRACTOR will have the right to request adjustments of the unit prices shown in the Fee Schedule, in compliance with the standards and procedures set forth in Paragraph SI 3 of the Special Instruction Sheet of CITY's Invitation to Bid 0118-1410 (the "ITB"). A copy of the Special Instruction Sheet is attached hereto as **Exhibit C**. (The ITB is further referenced in Section 20(n) of this Contract). The City Manager is authorized to approve or reject such requests on the CITY's behalf, in accordance with the limitations of Paragraph SI -3 of the Special Instruction Sheet; provided, that any failure by the City Manager to reply to CONTRACTOR's request for adjustment within the time frame provided will be deemed to be a denial. Acceptance of CONTRACTOR's request for adjustments will require a written change order. The change order must include a revised not to exceed annual price in place of the amount set forth in Section 3(b), attach and incorporate a revised

Fee Schedule, and be signed by the City Manager and the CONTRACTOR. All references herein to "Fee Schedule" or "Exhibit B" will be deemed to refer to Exhibit B as attached, or to the most current Fee Schedule approved by such change order.

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

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR will submit invoices only for services provided and accepted in accordance with the requirements of this Contract. CONTRACTOR may invoice within the time frames referenced in Exhibit A. CONTRACTOR will comply with all other invoicing requirements of Exhibit A.

(b) The CITY will pay based on the unit prices set forth in the Fee Schedule for services completed by CONTRACTOR during the period billed, provided that such services are reflected on CONTRACTOR's invoice.

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

Section 5. 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 6. 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 sub-contractors.

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

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

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

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

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

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

(4) Upon completion of the work required by a work authorization, keep and maintain public records required by the CITY to perform the service. 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 THE 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 9. Effective Date and Term.

The Effective Date of this Contract is 12/04/2018 or the date on which the last Party signs it, whichever is later. The Term of this Contract is 2 years, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 3 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.

Section 10. Termination of Contract.

(a) 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 the failure of the CONTRACTOR to fulfill its contractual obligations.

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

(2) Except as provided in Section 10(a)(3), before terminating due to 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 CONTRACTOR or any of CONTRACTOR'S personnel, in connection with the services or rights provided herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR'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 CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

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

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

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

Section 11. Suspension of Services. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(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 12. 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 agreement or otherwise.

Section 13. 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. If CONTRACTOR wishes

to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

(2) **Liability Insurance**, including (i) **Commercial general liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring 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, including mobile equipment, 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 shall 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 shall be used to provide such Additional Insured status.

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

(3) Unless specifically waived hereafter in writing by the Risk Manager, Contractor agrees that the insurer shall waive its rights of subrogation, if any, against the City on each of the above listed insurance coverages

(b) **Proof of Insurance.** 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 Management Division of the CITY 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.

Section 14. Bonds. There is no bonding required for this project.

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:

Attn: Shannon Ponitz, Utilities Director
City of Daytona Beach
125 Basin Street, Suite 100
Daytona Beach, FL 32114
Fax: 386-671-8801

To CONTRACTOR:

Attn: Ray Rutt, Jr.
Bryson Crane Rental Service, LLC
225 Marion Street
Daytona Beach, FL 32114
Fax: none

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

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

Section 16. Personnel. CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

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

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the 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 18. 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 19. Dispute Resolution.

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

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

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

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

Section 20. General Terms and Conditions.

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

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

(c) **Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR 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 CONTRACTOR.

(d) **Truth in Negotiations Certificate.** CONTRACTOR 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 CONTRACTOR's services under this Contract.

(f) **Contingency Fee.** 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 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 CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(g) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR 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, 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, physical or mental impairment, or age. 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.

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

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

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

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

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

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

(n) **Incorporation of ITB and Bid.** The CITY's Invitation to Bid 19111, and the CONTRACTOR'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 ITB and Proposal, the ITB will govern. In case of conflicts between **Composite Exhibit D** and other provisions of this Contract, including **Exhibits A-C** this Contract will govern.

(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

CONTRACTOR

By: _____
Derrick L. Henry, Mayor

By: Ray H. Ruti
Printed Name: RAY H RUTI
Title: CEO
Date: 12-17-18

Date: _____

Attest: _____
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

**EXHIBIT A:
SPECIFICATIONS FOR CRANE RENTAL**

SCOPE: The City of Daytona Beach Utilities Department requires annual crane rental/emergency services to be performed on an “as needed” basis. The Contractor will meet the routine and emergency crane rental service needs at the Ralph Brennan Water Treatment Plant, Westside Regional Wastewater Treatment Plant, Bethune Point Wastewater Treatment Plant, and associated well fields, booster pump stations, reuse pumps stations, and wastewater lift stations.

Contractor will submit a project estimate utilizing the hourly rates contained in the Bid Proposal Form, outlining the equipment type, equipment hours and personnel hours, estimated to be utilized, and estimated completion time and will submit the estimate within 1 business day of the City’s request. Emergency service will be billed at the hourly rates quoted within 5 business days of completion of the service.

RESPONSE TIME: Contractor shall start all non-emergency projects within seven (7) calendar days of authorization by the City. Authorization will be by issuance of a Purchase Order. The Contractor shall complete each non-emergency job within the time specified in their project estimate.

Contractor shall respond to calls for emergency service as soon as possible, typically 1-2 hours, after notification from the City. For the purpose of this Request for Quotes, an “emergency” is defined as any condition which is a threat to the health, welfare, or safety of citizens and/or property or a condition that will adversely affect an essential public service, as determined solely by the City. Contractor shall provide a telephone number for response to emergency needs that is accessible to the City 24 hours per day.

WORK STANDARDS: All work shall be performed according to the Crane Industry Standards and to the complete satisfaction of the City. All work shall fully conform to City of Daytona Beach Code of Ordinances. Contractor shall be licensed by the State of Florida as a crane services company. Contractor performing services for the City shall comply with all Occupational Safety and Health Administration (OSHA) standards, State and County Safety and Occupational Health Standards and any other applicable rules and regulations. The Contractor shall be held totally responsible for the safety of their employees and will immediately cease any unsafe activities and rectify any conditions that may cause injury or damage to any persons or property within and around the work site.

QUANTITIES: The service will be ordered on an “AS NEEDED” basis by the City of Daytona Beach. The City does not know how often services will be required during the term of this contract, however; a yearly expenditure of approximately \$25,000 is anticipated annually. This amount is an estimate and may increase or decrease as circumstances dictate. For the duration of the agreement, the City reserves the right to purchase more or less than any amounts listed herein, depending entirely upon the City’s needs.

CHARGES: Billable hours paid under this contract shall be only for productive hours at the job site. There shall be no separate invoice or charge for equipment or vehicles used. Time spent for transportation of workers, handling and delivery, or for movement of Contractor owned equipment is considered Contractor's overhead and shall be included in the hourly rates quoted for labor or services.

Regular service hours are defined as the hours of 7:00 a.m. to 3:30 p.m., Monday through Friday, excluding City recognized holidays. Work requested outside of these times (3:31 PM – 6:59 AM) will be considered "after hours" service and may be charged at the rates specified in the Bid Proposal Form.

a) If deemed an emergency during "regular hours" the Contractor will receive the "regular hours" rate plus 25%. b) If Contractor begins work during what is deemed "regular hours" but during the course of the job extends into "after hours" the Contractor will be paid at the "regular hours" rate for a minimum of two hours before being eligible for the "after hours" rate.

LARGE PROJECTS: The City will solicit separate sealed bids for projects estimated to exceed \$24,999 in total cost. The City may request an order of magnitude estimate from the Contractor prior to requesting a quote and assigning the project to the Contractor; the City shall not pay any fee for any estimates.

WORKMANSHIP & INSPECTION: All the work under the quote shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from the work that the City desires.

UNSATISFACTORY WORK: In the event the work performance of the Contractor is unsatisfactory, the Contractor will be notified by the City and shall correct the work at no additional cost to the City.

CLEAN-UP: The Contractor will remove all debris from the site and cleaning affected areas. Contractor shall keep the premises free of debris and unusable materials resulting from their work and as work progresses and shall remove such debris and materials from the property upon request by the City's representative. The Contractor shall leave all affected areas as they were prior to beginning work. The fee for any clean-up will be factored into the specific hourly labor rate worked.

PROTECTION OF PROPERTY: The Contractor shall make necessary repairs in such a manner that does not damage property. In the event damage occurs to property by reason of any repairs or installations performed under this Contract, the Contractor shall replace or repair the same at no cost to the City. If damage caused by the Contractor has to be repaired or replaced by the City, the cost of such work shall be deducted from the monies due to the Contractor.

PROTECTION OF MATERIALS: It will be the sole responsibility of the Contractor to safeguard their own materials, tools, and equipment. The City shall not assume any responsibility/liability for vandalism and/or theft of materials, tools, and/or equipment. The Contractor shall obtain the permission of the City's representative regarding any needed storage of equipment. Such storage shall be done in such a manner as not to interfere with the City's daily operations. Contractor will be responsible for any and all accidents caused by negligence resulting from failure to comply with this requirement. The City does not accept responsibility for losses of material or equipment regardless of approval to store in any of the City's facilities or grounds.

EMPLOYEES OF THE CONTRACTOR: No one, except authorized employees of the Contractor, are allowed on job premises. Contractor's employees are NOT to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized employee of the Contractor. At the City's option, security screenings of all Contractor employees performing work may be required.

PERSONNEL: All personnel providing services to the City shall be full-time employees of the Contractor, unless express written permission to use temporary employees or to subcontract a portion of the work is provided to and authorized by the City. The Contractor shall only use tradesmen 18 years or older.

PERSONAL CONDUCT: All individuals performing services to the City shall adhere to the City of Daytona Beach rules and regulations regarding appropriate attire, prohibition of smoking, usage of proper language, prohibition of use and possession of controlled substances and alcoholic beverages, prohibition of the possession of firearms, either on their person or in their personal vehicles and any other restrictions of prohibitions as may apply. Radios and other portable music playing equipment will not be allowed on any City's sites. Additionally, all individuals will adhere to and comply with the requirements as set forth in the terms and conditions of the contract. If an employee of the Contractor violates the personnel conduct provision of this agreement or fails to perform in a skillful and workmanlike manner, the City may require the Contractor to remove the employee from the job premises.

Contractor shall notify City personnel and follow customary check procedures when they are physically on-site at any City facility. All Contractor personnel are required to wear clothing identifying Contractor by either name or logo, and to have in possession and present upon request by City personnel a form of picture identification (i.e. – driver's license, ID card). Failure of Contractor's personnel to adhere to City rules and regulations described herein will result in removal of the individual(s) from the job site.

RIGGERS: Contractor's must use qualified riggers during hoisting activities for assembly and disassembly work (29 CFR 1926.1401, 1926.1404, and 1926.1425. These provisions are effective November 8, 2010. (1926.1404(r)(1))). Additionally, qualified riggers are required whenever workers are within the fall zone and hooking, unhooking, or guiding a load, or doing the initial connection of a load to a component or structure (1926.1425(c)).

A *qualified rigger* is a rigger who meets the criteria for a qualified person. Employers must determine whether a person is qualified to perform specific rigging tasks. Each qualified rigger may have different credentials or experience. A qualified rigger is a person that: a) possesses a recognized degree, certificate, or professional standing, or b) has extensive knowledge, training, and experience, and c) can successfully demonstrate the ability to solve problems related to rigging loads.

The person designated as the qualified rigger must have the ability to properly rig the load for a particular job. It does not mean that a rigger must be qualified to do every type of rigging job.

CITY'S RESPONSIBILITIES:

The City will:

- Advise the Contractor of the scope of work and of the materials and parts which may be needed when applicable.
- Approve a record of time and materials used for the job and providing a statement on the work ticket that they have inspected and accepted the work performed on the date.
- In the event that "after hours" hourly rates are required to complete the work, prior approval shall be obtained from the City's representative
- Process invoices for labor and equipment furnished by the Contractor in a timely manner.

Invoices shall be accompanied by a project sheet which shall include the scope of the project, hours the Contractor's employees started and finished the project, and Purchase Order number, signed by a City employee.

CONTRACTOR'S RESPONSIBILITIES:

CONTRACTOR QUALIFICATIONS: By responding to this Invitation to Bid, the Contractor warrants and represents itself to be experienced and an expert in the field of service contemplated. Contractor further understands that in awarding Purchase Orders, the City of Daytona Beach is relying upon the representations and warranties of the Contractor herein contained.

Contractor is required to be licensed and insured in the state of Florida. Respondents shall accompany their Price Proposal Form with a current copy of their Contractor's license.

INVOICING: Contractor shall submit invoices to the City no more than thirty (30) days after completion of each job. Each invoice must reflect the individual man hours worked per crane operator and signalman, and equipment utilized for the job completed as

outlined on the Price Proposal Form. Any use of Riggers by Crane company must show certification on work ticket and billing statement.

Exhibit B: Bid Schedule

BRYSON CRANE - SUBMITTED 11-5-18	A	C	F	
CRANE SIZE	MINIMUM CHARGE HOURS	HOURLY CHARGE REGULAR HOURS (7:00AM-3:30PM)	AFTER HOURS HOURLY CHARGE (3:31PM-6:59AM)	
22 TON	4	\$ 100.00	\$ 140.00	
30 TON	4	\$ 125.00	\$ 165.00	
40 TON	4	\$ 135.00	\$ 175.00	
50 TON	4	\$ 150.00	\$ 190.00	
60 TON	6	\$ 160.00	\$ 200.00	
70 TON	6	\$ 185.00	\$ 225.00	
80 TON	6	\$ 205.00	\$ 245.00	
100 TON	8	\$ 250.00	\$ 290.00	
130 TON***	8	\$ 300.00	\$ 340.00	
150 TON***	8	\$ 350.00	\$ 390.00	
ADD'L TRIP CHARGE TO HAUL COUNTERWEIGHT FOR HEAVIER TONNAGE (not to be charged for every time a crane is transported) (per trip, each way)***	PER TRIP, NO MINIMUM TIME LIMIT	\$ 980.00	\$ 980.00	
EQUIPMENT				
TRACTOR WITH FLATBED	4	\$ 125.00	\$ 165.00	
TRACTOR WITH FLATBED & PIGGYBACK	4	\$ 150.00	\$ 190.00	
5,000 LB CAPACITY FORKLIFT	4	\$ 125.00	\$ 165.00	
10,000 LB CAPACITY FORKLIFT	4	\$ 135.00	\$ 175.00	
15,000 LB CAPACITY FORKLIFT	4	\$ 145.00	\$ 185.00	
30,000 LB CAPACITY FORKLIFT	6	\$ 175.00	\$ 215.00	
PERSONNEL				
RIGGER/SIGNAL PERSON*	4	\$ 95.00	\$ 135.00	
ANNUAL ESTIMATED GRAND TOTAL		\$ 48,080.00	\$ 27,570.00	\$ 75,650.00

EXHIBIT C

SI 3. PRICE ADJUSTMENTS.

The contract prices are expected to remain firm during the contract term. In the event that the Contractor has an increase in operational expenses, the Contractor may request an increase in unit prices. The Contractor may seek an increase only after twenty-four (24) months of service has been provided. Once requested, regardless if the increase is approved; the Contractor must perform satisfactory service for an additional twelve (12) months prior to another request for an increase of unit costs. The reason for an increase in unit costs must be outside of the Contractor's control. The written request for an increase will be submitted to the Purchasing Department. This written request will indicate the additional cost over the original bid amount per unit. Any request must be submitted with bona fide documentation that indicate the additional costs to the Contractor that is being passed on to the consumer. No adjustment will be made for inefficiency in operation or for additional profit. Any adjustment will be based on the latest yearly increase in the PPI (Producer Price Index) as published by the Bureau of Labor Statistics within the line item, "*PPI Commodity data for Rental and leasing of goods (partial)-Construction, mining, and forestry machinery and equipment rental and leasing, not seasonally adjusted*", Series ID WPU443 (98.6-Aug 2018) and will not exceed five percent (5%).

Any increase in prices is at the sole discretion of the City. If the City approves the additional costs, the costs will not be implemented for thirty (30) calendar days. If the City rejects the price increase, the Contractor may choose to terminate the contract after a sixty (60) day written notice. The City may seek a price de-escalation using the same methods.

Any decrease in the PPI for the category stated above will be reviewed by the purchasing department at the end of the first 24-month period, and at the time each subsequent renewal letter is prepared. If there is a decrease in the PPI category of at least 1% in the prior 12 month period the renewal letter sent to the Contractor will reflect such a unit price decrease.

Log on to <https://data.bls.gov/timeseries/wpu443> and check index for 12 month % change for verification of annual percentage change. Percentage is based on the month which the contract became effective.

Composite Exhibit D 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)

11/9/2018

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 Allied Insurance Brokers, Inc. Four Gateway Center 444 Liberty Avenue, Suite 400 Pittsburgh PA 15222	CONTACT NAME: Emily Ramos	
	PHONE (A/C No. Ext): 412-535-9287	FAX (A/C No.):
E-MAIL ADDRESS: eramos@alliedinsbrokers.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : AGCS Marine Insurance Company		22837
INSURER B : Gotham Insurance Company		25569
INSURER C : New York Marine and General Ins Co		16608
INSURER D :		
INSURER E :		
INSURER F :		

INSURED 11431
 Bryson Crane Rental Service, LLC
 225 Marion Street
 Daytona Beach FL 32114

COVERAGES **CERTIFICATE NUMBER: 2025354564** **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
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	GL201800006488	5/15/2018	5/15/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Riggers Liability \$ \$1,000,000
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	AU201800012858	5/15/2018	5/15/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	EX201800000827	5/15/2018	5/15/2019	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC201800012386	10/24/2018	10/24/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Contractor's Equipment Special Form Including Theft			MX183067163	5/15/2018	5/15/2019	Motor Truck Cargo 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 OVER THE ROAD COVERAGE FOR MOBILE EQUIPMENT: \$1,000,000 bodily injury and property damage provided by the General Liability. All entities required by written contract to be included as additional insureds but only with respect to ongoing & completed operations performed by the Named Insured or on their behalf with respect to general, automobile liability and excess liability. Coverage afforded by the general liability is primary and non-contributory in favor of the additional insured per written contract. A Waiver of Subrogation is provided as required by written contract and applies with respect to general liability, auto liability, excess liability and workers compensation. Excess Liability is follow form over general liability, riggers liability, auto liability and employers liability. Additional Insured: The City of Daytona Beach

CERTIFICATE HOLDER City of Daytona Beach 125 Basin Street, Suite 100 Daytona Beach FL 32114	CANCELLATION 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 <i>Marti E. O'Brien</i>
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