AGREEMENT BETWEEN
THE CITY OF DELTONA AND GA MCKEOWN & ASSOCIATES, LLC

THIS AGREEMENT is made and entered into this 16th day of November, 2016 by and between the CITY OF DELTONA, a municipality of the State of Florida, whose address is 2345 Providence Boulevard, Deltona, Florida 32725, hereinafter called the "City" and GA MCKEOWN & ASSOCIATES, LLC., duly authorized to conduct business in the State of Florida, whose principal address is 213 Silver Beach Avenue, Daytona Beach, FL 32118 hereinafter called the "Consultant".

WITNESSETH:

WHEREAS, RFP #17003 did seek firms or individuals qualified to provide professional Consultant for State Government Relations Services & Lobbying; and

WHEREAS, the firm desires to perform such services subject to the terms of this Agreement; and

WHEREAS, the Consultant desires to perform such services subject to the terms of this Agreement; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein by reference.

Article 2. Scope of Professional Services

2.1 On the terms and conditions set forth in this Agreement, City hereby engages Consultant to provide professional Consulting for State Government Relations Services & Lobbying pursuant to Consultant's Proposal dated September 28, 2016, which is attached hereto and incorporated herein by reference.

2.2 The services, as described in RFP #17003, to be rendered by the Consultant, shall be for a period of one year with the option to renew for successive one year terms upon mutual agreement of both parties.

2.3 The services to be rendered by the Consultant shall include all labor, materials and incidentals necessary to perform all work indicated and specified in the RFP documents.

2.4 Consultant acknowledges that nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar services as

those undertaken by the Consultant or from independently developing or acquiring materials or programs that are similar to or competitive with, the services provided under this Agreement.

2.5 Consultant shall be responsible for obtaining all required federal, state or local permits required to complete the scope of work under this agreement.

Article 3. Compensation

3.1 The City agrees to compensate GA McKeown & Associates, LLC for annual services in the amount of Forty-Five Thousand dollars ($45,000) for work performed, completed and accepted by the City's representative.

3.2 Payment for any and all invoices that may arise as a result of a purchase order issued pursuant to this specification shall minimally meet the following conditions to be considered as a valid payment request:

3.2.1 A timely submission of properly certified invoices, in strict accordance with the prices and delivery elements as stipulated in the purchase order document, submitted to the Finance Department at the address stipulated on the Purchase Order.

3.2.2 All invoices submitted shall consist of an original and one (1) copy; clearly reference the purchase order number; provide a sufficient salient description to identify goods or service for which payment is requested; contain date of delivery; original or legible copy of signed delivery receipt including both manual signature and printed name of a designated City employee or authorized Agent; and be clearly marked as "partial", "complete" or "final" invoice. The City will accept partial deliveries.

3.2.3 The invoice shall contain the Proposer's Federal Employer Identification Number.

3.2.4 The City's terms are "Net 30 Days" after acceptance of goods or services and receipt of an acceptable invoice as described herein. Any discounts must be offered on the RFP Response Form.

3.3 The Consultant shall not be entitled to payment for any other expenses, fees, or other costs it may incur at any time and in any connection with its performance hereunder other than those fees as stated in the Work Authorization. The Consultant hereby agrees that the total cost, as stated in the Work Authorization, is inclusive of all overhead and administrative expenses.

3.4 In the event a specific project is to be funded by state or federal monies, the Consultant hereby agrees to comply with all requirements of the state or federal government applicable to the use of the monies, including receiving no payment until all required forms are completed, submitted, and approved by the City.

Article 4. City Responsibilities

4.1 City shall promptly review the deliverables and other materials submitted by Consultant and provide direction to Consultant as needed. City shall designate one City staff member to act as City's Project Administrator and/or Spokesperson.

4.2 The City will provide to the Consultant all necessary and available data developed and/or within the possession of the City, and any other data the City possesses that would be useful to the Consultant in the completion of the required services.

Article 5. Special Terms and Conditions

5.1 Qualifications. Firms or individuals shall be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by Florida Statutes to perform the services contained herein.

5.2 Termination. This Agreement may be terminated by the City upon thirty (30) days advance written notice to the Consultant; but if any work is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the City until said work is completed by the Consultant and accepted by the City.

A. Upon notification to the Consultant of termination by the City, Consultant will immediately discontinue all services affected unless the notice directs otherwise.

B. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of City, City shall reimburse Consultant for actual work satisfactorily completed.

C. Termination for Cause. If the termination of this Agreement is due to the failure of the Consultant to fulfill his contractual obligations, City shall reimburse Consultant for actual work satisfactorily completed, and City may take over the work and prosecute the same to completion by Agreement or otherwise.

D. In the event of termination of this Agreement, all work, reports, and other work product produced by Consultant in connection with the Agreement shall be returned to the City and become and remain the property of the City.

5.3 Assignment. This Agreement may not be assigned or transferred in any manner by Consultant without written authorization by the City.

5.4 Insurance and Bond. Consultant shall provide and maintain, during the entire term of this Agreement, without cost to the City, insurance in the following types and limits with a company or companies authorized to do business in the State of Florida. Consultant shall not commence work under the Agreement until City has received an acceptable certificate or certificates of

insurance and endorsement evidencing the required insurance, with the following minimum limits and coverage limits fully available during the entire contract period:

(A) Professional liability (medical malpractice, engineers, architect, environmental, errors and omissions, etc.) insurance as applicable, with minimum limits of $1,000,000. Professional liability insurance shall be maintained for at least one year from the termination of the Agreement.

(B) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01 or CG 00 02) of the Insurance Services Office or equivalent without restrictive endorsements, with the minimum limits and coverage of $1,000,000 per occurrence; combined single limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors, and Products and/or Completed Operations, and a Contractual Liability Endorsement.

(C) Contractor/Consultant shall maintain automobile liability insurance with a limit of not less than $1,000,000 combined single limit each accident; $500,000 bodily injury per person; $500,000 bodily injury per accident; $300,000 property damage. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned autos. The policy shall be endorsed to provide contractual liability coverage.

(D) Workers' compensation insurance in accordance with Florida Statute, Chapter 440, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc).

(E) Additional Requirements.

(1) **City of Deltona shall be <u>named and endorsed</u> as an additional insured on the General liability policy.**

(2) The General Liability policy is to contain or be endorsed to name the City, its officers, officials and employees as additional insureds as respects to the liability arising out of the activities performed under this Agreement. Such coverage shall be primary to the extent of Consultants negligent acts or omissions or willful misconduct, and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. In addition, a waiver of subrogation by the commercial liability insurer shall be provided that lists or names the additional insured as subject to the waiver. Coverage shall be on an "occurrence" basis and not "claims made".

(3) Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the City of any material change or cancellation of the required

insurance, with ten (10) day written notice of cancellation due to non-payment of premium.

(4) Certificates of insurance shall identify the Bid number, contract, project, etc. in the Description of Operations section of the Certificate.

(5) Consultant shall be responsible for subcontractors and their insurance.

(6) The Certificate holder section of each policy shall state: City OF DELTONA, 2345 PROVIDENCE BOULEVARD, DELTONA, FLORIDA 32725.

(7) Consultant shall be solely responsible for all deductibles and self-insurance retention on Liability Insurance policies. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused without thirty (30) calendar days written notice, or without ten (10) days written notice of cancellation due to non-payment of premium, being given to City by certified mail.

5.5 Indemnity. Consultant shall indemnify and hold City and its agents, officers, commission, or employees harmless for any damages resulting from failure of Consultant to take out and maintain the above insurance. Additionally, Consultant agrees to indemnify, defend and hold the City, and its officers, commission, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional and attorney fees, court costs, other expenses and liabilities to the extent resulting from the negligent act, error or omission of Consultant, its agents, employees or representative, in the performance of Consultant's duties set forth in this Agreement, including any act alleged to give rise to an action in inverse condemnation.

5.6 Independent Contractor. Consultant agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of City. Consultant shall have no authority to contract for or bind City in any manner and shall not represent itself as an agent of City or as otherwise authorized to act for or on behalf of City.

5.7 Ownership of Deliverables.

(a) Title to all work product produced by Consultant pursuant to this Agreement shall be and remain the sole and exclusive property of City when produced. Consultant shall deliver all such original work product to City upon completion thereof unless it is necessary for Consultant, in City's sole discretion to retain possession for a longer period of time.

(b) The documents, reports, and similar materials provided or created by Consultant are public records and Consultant shall abide by applicable requirements of Florida law. Consultant shall notify the City within 24 hours of receiving the request to release the information concerning the subject project to a member of the media and/or to the public. The City's

notification shall to the extent possible provide the name, date, time and type of information requested to be released prior to the Consultant's release or disclosure of information to the media or to the public.

5.8 Return of Materials. Upon the request of the City, but in any event upon termination of this Agreement, Consultant shall surrender to the City all memoranda, notes, records, and other documents or materials pertaining to the services hereunder, that were furnished to the Consultant by the City pursuant to this Agreement. Consultant may keep copies of all work products for its records.

5.9 NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work from any cause whatsoever, shall relieve the Consultant of his duty to perform or give rise to any right to damages or additional compensation from the City. The Consultant expressly acknowledges and agrees that the Consultant shall receive no damages for delay. The Consultant's sole remedy, if any, against the City shall be the right to seek an extension to the contract time.

5.10 Retaining Other Consultants. Nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the Consultant or from independently developing or acquiring materials or programs that are similar to or competitive with, the services provided under this Agreement.

5.11 Accuracy. The Consultant is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, reports or other services.

5.12 Codes and Regulations. All work completed under this Agreement shall at all times comply with all applicable federal, state and local statutes, codes, regulations and ordinances.

5.13 Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or engineer under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

5.14 Prohibition against Contingent Fees. Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

5.15 Public Records. The Consultant shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Consultant in conjunction with this Agreement. Specifically, the Engineer shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in state law or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Consultant upon termination of the Agreement and destroy and duplicate public records that are exempt or confidential and exempt from the public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology system of the City.

Article 6. General Conditions

6.1 This Agreement is made under, and in all respects shall be interpreted, construed, enforced, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie solely in Volusia County, Florida.

6.2 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. The City may make changes in the services at any time by giving written notice to Consultant. If such changes increase (additional services) or decrease (eliminate any amount of work) in the scope of work, City and Consultant shall modify this agreement through issuance of a change order. All change orders shall be authorized in writing by City prior to commencing or reducing any term of this agreement.

6.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

6.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns. Nothing in this Agreement is intended or shall be deemed to confer any rights or benefits upon any entity or person other than the parties hereto or to make or render any such other entity or person a third-party beneficiary of this Agreement.

6.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

6.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

6.7 During the term of this Agreement Consultant assures City that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that Consultant does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminated in any form or manner against Consultant employees or applicants for employment. Consultant understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

Article 7. Severability

7.1 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7.2 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to Consultant:
Georgia McKeown
GA McKeown & Associates, LLC
213 Silver Beach Avenue
Daytona Beach, FL 32118

If to City:
Jane Shang
City Manager
City of Deltona
2345 Providence Blvd.
Deltona, Florida 32725

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

Article 8. Scope of Agreement

8.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

8.2 This Agreement consists of the following:

This Agreement
Notice of Award
RFP Documents
Addendum, if any
Consultant's Proposal

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

Secretary

(CORPORATE SEAL)

CONSULTANT:

President GA McKeown & Assoc., LLC

11/10/2016
Date

ATTEST:

JOYCE RAFTERY
City Clerk

CITY OF DELTONA

JANE SHANG
City Manager

11-16-2016
Date

Approved as to Form and Legality:

GRETCHEN R.H. VOSE
City Attorney