TO: POP Committee

FROM: Merry Chris Smith, VGMC Operations Manager

DATE: September 14, 2022

RE: POP Committee Meeting, September 28, 2022

Attached please find the agenda package for the next POP Committee meeting scheduled for Wednesday, September 28, 2022 beginning at 5:30 p.m. in the County Council Chambers in DeLand.

If you have any questions or are unable to attend the meeting, please let me know at your earliest convenience.

Thank you.

Merry Chris

POP Committee:
Debbie Connors, Committee Chair
Loretta Arthur
Jon Greene
Dwight Lewis
Philip Maroney
Larry Saffer
Robert Storke
Volusia Growth Management Commission
Personnel, Operations & Procedures Committee Meeting
Notice and Agenda

5:30 p.m. September 28, 2022

Thomas C. Kelly Administration Center
Frank T. Bruno, Jr. County Council Chambers
123 W. Indiana Avenue
DeLand, FL

I. Roll Call

II. New Business

1) Approval of Minutes – January 26, 2022 POP Committee Meeting
2) Consider recommendation for renewal of S&ME planning services contract for 2022-23
   Fiscal Year
3) Consider recommendation for renewal of VHB planning services contract for 2022-23
   Fiscal Year
4) Consider recommendation for renewal of GrayRobinson legal services contract for
   2022-23 Fiscal Year

III. Old Business

IV. Other Business

  - Renewal of 2022-23 VGMC Office Lease

V. Adjournment

If a person decides to appeal any decision by the VGMC of any matter considered at such public meeting, (s)he will need to ensure that a verbatim record of such meeting is made, which record includes the testimony and evidence upon which the appeal is based.

In accordance with The Americans with Disabilities Act (ADA), if a person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, (s)he should contact the VGMC office at least 48 hours prior to the proceeding at 140 S. Beach, Daytona Beach, FL, (386) 947-1875.
The meeting was called to order at 6:31 p.m. by POP Chair Debbie Connors. The following POP Committee members were also in attendance: Loretta Arthur, Harold Briley, Dwight Lewis, Larry Saffer, Robert Storke, and Jack Surrette. Also in attendance was VGMC Chair Sid Vihlen, Jr.

**NEW BUSINESS**

1) Approval of Minutes – September 22, 2021 POP Committee Meeting

Harold Briley made a motion to approve the minutes of the September 22, 2021 POP Committee meeting as presented; seconded by Jack Surrette. Motion carried unanimously.

2) Annual Performance Evaluation of VGMC Operations Manager

Chair Connors collected the individual performance evaluation forms completed by the POP Committee members and she reported that each evaluation has ranked Ms. Smith’s performance as outstanding.

**OLD BUSINESS**

None

**OTHER BUSINESS**

None

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 6:36 p.m.

_________________________________
POP Committee Chair
TO: Members of the POP Committee

FROM: Merry Chris Smith, VGMC Operations Manager

DATE: September 14, 2022

RE: S&ME Proposed Renewal Contract for 2022-23 Fiscal Year

Attached please find the proposed renewal contract submitted by S&ME for professional planning services for the 2022-23 fiscal year.

The S&ME proposed contract rates and terms are consistent with the current approved contract, and Chris Dougherty remains the designated project manager at the rate of $135 per hour.

The POP Committee will review the contract and consider a recommendation to bring before the full commission at the September 28th regular meeting.

Mr. Dougherty will be in attendance at the September meetings to address any questions you may have. If you have any questions in advance of the meeting, please do not hesitate to contact me.

Merry Chris

POP Committee:

Debbie Connors, Chair
Loretta Arthur
Jon Greene
Dwight Lewis
Philip Maroney
Larry Saffer
Bob Storke
June 15, 2022

Mr. Sid Vihlen, Jr.
Volusia Growth Management Commission
140 S. Beach Street
Suite #305
Daytona Beach, FL 32114

Reference: Consulting Planning Services Contract 2022-2023
S&ME Project No. 20140535

Dear Mr. Vihlen:

S&ME, Inc. (S&ME/CONSULTANT), is pleased to present this contract to provide full range comprehensive plan amendment review services to the Volusia Growth Management Commission (VGMC/CLIENT) for the 2022-2023 fiscal year. We are excited about the opportunity to continue to work in a creative and collaborative environment with the VGMC and are committed to providing the Commission with thorough reviews and attentive service.

PROJECT DESCRIPTION

S&ME understands that the VGMC is tasked by Section 202.3 of the Volusia County Charter to “determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.” Section 90-37 of the Volusia County Code further defines the VGMC’s powers and duties under the Charter.

S&ME will provide to the VGMC the professional planning services necessary to meet the responsibilities defined in both the County Charter and Code of Ordinances. This includes review of comprehensive plan amendments for consistency with the comprehensive plans of adjacent local governments and all other substantially affected and aggrieved local governments, as well as a determination as to whether the proposed amendment adversely affects intergovernmental cooperation and coordination.

The scope of services provided to the Commission is more specifically described in the section below.

SCOPE OF SERVICES

Application Review

Upon receipt of an application from the VGMC Operations Manager, S&ME will review the subject comprehensive plan amendment utilizing the rules identified in Sections 90-35(d), 90-37 and 90-34.1 of the Volusia County Code. This review may include:

- Communication with the VGMC Operations Manager, VGMC Legal Counsel and VGMC Chairman.
• Verbal or written correspondence with the applicant local government, adjacent local
governments, other substantially affected or aggrieved local governments, state or local
regulatory agencies and interested third parties.
• Preparation of Requests for Additional Information ("RAI").
• Preparation of a Determination of Consistency memorandum to the Chairman for applications
determined to be eligible for certification.
• Preparation of a staff report and presentation for applications which require a public hearing
before the VGMC.
• Review of additional information as identified in Section 90-37(i) of the Volusia County Code.
• Upon prior approval from the Chairman, meet with the local governments and proponents of
a comprehensive plan change to discuss and review planning issues on particular applications
to the Commission; in the event there are exigent circumstances to attend such a meeting and
prior approval from the Chairman is not possible, authorization to attend said meeting may be
obtained from the Vice Chairman or the Secretary of the Commission.
• Attendance at VGMC regular meetings as directed by the Chairman and provide oral report on
planning activities unless otherwise notified by the VGMC Operations Manager at the time of
agenda distribution.
• Attend VGMC committee meetings as directed by the committee chair.
• Undertake and/or participate in special projects and prepare reports, such as, but not limited
to, the revisions to the Certification Rules, as directed by the Commission.

Other Duties

Upon prior approval from the Chairman, Consultant may also:

• Represent the VGMC at hearings, meetings or workshops relating to comprehensive planning
matters.

DESIGNATED PROJECT MANAGER

S&ME represents that Christopher R. Dougherty, AICP will serve as the designated project manager for the
VGMC, and will be the primary point of contact and responsible for work product to the VGMC. Consultant
agrees that any intended change or substitution in the designated project manager must be approved in
advance by the VGMC.

ADDITIONAL SERVICES

S&ME can provide additional related services to above scope of services as requested by the VGMC. These
may include, but are not limited to, preparing special studies; attendance at meetings or seminars not
identified in the scope; or evaluating changes in legislation.

COMPENSATION

Consultant will perform the Scope of Services contained in this Agreement in accordance with Exhibit "A"
on an hourly basis consistent with the rate schedule attached as Exhibit "B."
INVOICES

Invoices will be submitted to the VGMC on a monthly basis. All invoices will include a detailed description of services performed along with the corresponding date(s) the services were performed, the specific staff member who performed the services, and the number of hours billed for those services.

Again, thank you for the opportunity to submit this contract letter. We look forward to continuing our partnership in fiscal year 2022-2023. If the scope of services, fee rates and the terms of the agreement are acceptable, please sign and return a copy of this letter to our office.

Sincerely,

S&ME, Inc.

Eric Raasch, Jr., AICP
Planning Group Leader

Chris R. Dougherty, AICP
Planner/Project Manager

AGREED BY:

________________________________________  _________________________________________
Name     Date

Volusia Growth Management Commission, Title
Exhibit A

S&ME

TERMS AND CONDITIONS

ARTICLE 1. CONSULTANT’S RESPONSIBILITIES:

1.1 Perform its services in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent consultants practicing in the same or similar locality of the PROJECT site. No other warranty, expressed or implied, is made.

1.2 Rely upon the accuracy and completeness of information and services furnished by CLIENT and/or the CLIENT’S consultants and contractors. The CONSULTANT shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT’S consultant and contractors.

1.3 Consider all prepared documents to be confidential, and distribute copies of same only to those persons or agencies specifically designated by CLIENT or his authorized representative.

1.4 In representing the CLIENT, the CONSULTANT could be deemed to be a “contractor” under section 119.0701, Fla. Stat.

   a. In an abundance of caution, the CONSULTANT shall comply with the letter and spirit of Florida’s Public Records Act, Chapter 119, Fla. Stat., including specifically section 119.0701(2), which requires that the CONSULTANT:

      i. Keep and maintain public records required by the Commission to perform the services under this Agreement.

      ii. Upon request from the Commission’s custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law.

      iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the Commission.

      iv. Upon completion of the Agreement, transfer, at no cost, to the Commission all public records in possession of Contractor or keep and maintain public records required by the Commission to perform the service. If the Contractor transfers all public records to the Commission upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission’s custodian of public records, in a format that is compatible with the information technology systems of the Commission.

   b. If the Contractor fails to provide the public records to the Commission within a reasonable time the Contractor may be subject to penalties under Section 119.10 of the Florida Statutes. Further, the Commission may exercise any remedies at law or in equity, including,
without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

c. **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 AGREEMENT, CONTACT THE COMMISSION’S CUSTODIAN OF PUBLIC RECORDS AT 386-947-1875, vgmc@volusia.org, and 140 S. Beach Street, #305, Daytona Beach, FL 32114.**

1.5 The CLIENT should be aware of the CONSULTANT’S document and file retention policy. Once a case is concluded, the file will be officially closed. Once the file is closed, it may be sent to off-site storage, and there may be costs associated with retrieval of information from the file. The CONSULTANT retains stored and closed files for a period of ten (10) years after which time the files may be destroyed.

**ARTICLE 2. CLIENT’S RESPONSIBILITIES:**

2.1 Provide CONSULTANT with necessary PROJECT information in a timely manner regarding the requirements for and limitations of the PROJECT which is available to or reasonably obtainable by the CLIENT.

2.2 Furnish right-of-entry onto the PROJECT site in order for CONSULTANT to perform work associated with the PROJECT. CONSULTANT will endeavor to preserve the land but makes no guarantee to restore the site to its original condition.

2.3 Designate PROJECT representative to coordinate with the CONSULTANT.

2.4 Guarantee to CONSULTANT that he has the legal capacity to enter into this contract, and that sufficient monies are available to fund CONSULTANT’S compensation.

2.5 Provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or defect in the PROJECT, including any errors or omissions in CONSULTANT’S work.

**ARTICLE 3. GENERAL CONDITIONS:**

3.1 CONSULTANT, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the PROJECT.

3.2 CONSULTANT shall not be responsible for acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written or verbal recommendation issued by CONSULTANT except for specific design specifications.

3.3 This section intentionally deleted.

3.4 This Agreement may be terminated in accordance with Section 8.1. In the event of termination of this Agreement, the CLIENT shall, within thirty (30) calendar days of termination, pay the CONSULTANT for all services rendered and all reimbursable costs incurred by the CONSULTANT up to the day of termination. In the event of any termination that is not the fault of the CONSULTANT, the CLIENT shall pay the CONSULTANT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the CONSULTANT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associates overhead costs and all other expenses directly resulting from the termination.
3.5 Neither CLIENT nor CONSULTANT may assign, transfer, or sublet any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to sub-consultants, normally contemplated by the CONSULTANT as a generally accepted business practice, shall not be considered an assignment for the purposes of this Agreement. Any subconsultants utilized by CONSULTANT shall be pre-authorized by CLIENT.

3.6 This section intentionally left blank.

3.7 If a dispute arises out of or relates to this contract, or the breach thereof, the parties will attempt to settle the matter through amicable discussion. If no agreement can be reached, the parties agree to use non-binding mediation before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, reasonable costs and attorneys’ fees will be awarded to the prevailing party. All questions as to the interpretation or enforceability of this Agreement shall be governed in accordance with the laws of Florida. In the event of any litigation involving this Agreement or the performance by the parties thereto, such actions shall be brought in a court of competent jurisdiction in Florida.

3.8 The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless the CONSULTANT, its officers, directors, employees, and sub-consultants (collectively, CONSULTANT) from and against all claims, damages, liabilities or costs, including reasonable attorney’s fees and defense costs, arising out of or in any way related to the services performed under this Agreement, except to the extent such claims, damages, liabilities or costs result from CONSULTANT’S sole negligence or willful misconduct.

3.9 The CLIENT and the CONSULTANT waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement, and the CONSULTANT and the CLIENT release each other from any and all such consequential damages. This mutual waiver is applicable, without limitation, to all consequential damages including but not limited to, consequential damages arising out of either party’s termination in accordance with Section 3.4.

3.10 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT’S services under this Agreement are being performed solely for the CLIENT’S benefit, and no other party or entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder.

3.11 The CLIENT and CONSULTANT agree that notices may be sent in writing or by electronic means as outlined in the Uniform Electronic Transaction Act and that electronic signatures are as equally binding as manual signatures.

3.12 This section intentionally deleted.

ARTICLE 4. OWNERSHIP OF DOCUMENTS:

4.1 All documents including Drawings and Specifications (whether in hard or electronic form) prepared by Consultant pursuant to the Agreement are instruments of service with respect to the Project. They are not intended or represented to be suitable for reuse by the VGMC or others on extensions of the Project or any other Project. Any reuse by the VGMC or a third person or entity authorized by the VGMC without written verification or adaptation by Consultant for the specific purpose intended will be at the VGMC’s sole risk and without liability or legal exposure to the Consultant; and the VGMC, shall release, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys’ fees arising out of or resulting there from.
Any such verification or adaptation will entitle the Consultant to additional compensation at rates to be agreed upon by the Consultant and the third person or entity seeking to reuse said documents.

If any information hereunder is provided in electronic format, the VGMC recognizes that such plans, documents or other information recorded on or transmitted as electronic media, including CADD documents (“Electronic Documents”) are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the Electronic Documents are provided to the VGMC for informational purposes only and not as record documents.

4.2 To the extent permitted by law, the Consultant retains the copyright in all written work products, including plans, specifications, calculations, computer programs, and computer generated materials in any form, produced in connection with the work under this Agreement, unless otherwise agreed to in writing by an authorized representative of the Consultant. Subject to this Exhibit A, Section 4.1, Documents and Work Product, the Consultant licenses to the VGMC the use of all written work products, including plans, specifications, calculations, and computer generated materials in any form, produced in connection with the work under this Agreement on a non-exclusive basis.

ARTICLE 5. PAYMENT:

5.1 Billing for contracts shall be on a monthly basis. Invoices are due upon receipt. Payment not received within thirty (30) days of invoice date will be subject to a service charge in the amount of one and one-half percent (1.5%) per month. If account is not paid per the terms of this agreement, CONSULTANT is entitled to recover any and all reasonable attorneys’ fees related to the collection from the CLIENT. In addition, CONSULTANT reserves the right to suspend all work in any case where invoices remain unpaid more than sixty (60) days from issue.

5.2 This section intentionally deleted

ARTICLE 6. EXTENT OF AGREEMENT:

6.1 These terms and conditions, along with the proposal, represent the entire Agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or agreements, written or oral. The Agreement may be amended only by written instrument signed by CLIENT and CONSULTANT.

ARTICLE 7. TERM:

7.1 Consultant will begin performance of the above services on the date written authorization to proceed is received. The duration of this continuing services agreement shall be through September 30, 2023. The VGMC shall have the option of extending this Agreement for an additional one (1) year term, however, this Agreement will revert to a month-to-month contract under the current terms until such time as a new Agreement is reached.
ARTICLE 8. TERMINATION OF REPRESENTATION:

8.1 In the event Consultant elects to withdraw from representation, or if the VGMC, by a weighted majority vote of the Commission, elects to terminate the services of Consultant, a minimum of 30 days written notice will be provided to the affected party.

ARTICLE 9. CONFLICT OF INTEREST:

9.1 Consultant strives to maintain ethical standards. Consultant represents that it will not perform services that conflict with, or will otherwise impair, its ability to perform the work under this Agreement.

9.2 Consultant agrees that, if changes, including additions, to the facts disclosed by it prior to execution of this agreement, occur during performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Client. Such disclosure may include a description of any action which Consultant has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest.

ARTICLE 10. INSURANCE:

10.1 Consultant agrees to carry the following insurance during the term of this Agreement, and certificates of insurance shall be furnished:

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers' Compensation</td>
<td>Florida Statutory Coverage</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>$100,000 Each Accident</td>
</tr>
<tr>
<td>(including Appropriate Federal Acts)</td>
<td>$500,000 Disease Policy Limit</td>
</tr>
<tr>
<td></td>
<td>$100,000 Each Employee/Disease</td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 Each Occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000 General Aggregate</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 Personal/Advertising Injury</td>
</tr>
<tr>
<td></td>
<td>$5,000 Medical</td>
</tr>
<tr>
<td>Auto Liability</td>
<td>$500,000 CSL</td>
</tr>
<tr>
<td>All autos-owned, hired or non-owned (Symbol 1 Coverage)</td>
<td></td>
</tr>
<tr>
<td>Professional Liability (E &amp; O)</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
Exhibit B

S&ME

SCHEDULE OF HOURLY RATES

2022 - 2023

<table>
<thead>
<tr>
<th>Classification</th>
<th>Hourly Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project Team Rates Schedule:</strong></td>
<td></td>
</tr>
<tr>
<td>Project Manager</td>
<td>$135.00</td>
</tr>
<tr>
<td>Senior Planning Advisor</td>
<td>$155.00</td>
</tr>
<tr>
<td>Planning Director/Group Leader</td>
<td>$210.00</td>
</tr>
<tr>
<td>Economic Development/Redevelopment Planner</td>
<td>$145.00</td>
</tr>
<tr>
<td>Planner/GIS Specialist</td>
<td>$115.00</td>
</tr>
<tr>
<td>Transportation Planner</td>
<td>$115.00</td>
</tr>
<tr>
<td>Landscape Architect</td>
<td>$145.00</td>
</tr>
<tr>
<td>Civil Engineer</td>
<td>$145.00</td>
</tr>
<tr>
<td><strong>Additional Rates Schedule of Auxiliary Staff:</strong></td>
<td></td>
</tr>
<tr>
<td>Senior Consultant</td>
<td>$285.00</td>
</tr>
<tr>
<td>Principal/Sr. Project Manager/Project Manager/Design Manager</td>
<td>$135.00 to $285.00</td>
</tr>
<tr>
<td>Professional Engineer/Landscape Architect/Planner/Geologist</td>
<td>$90.00 to $155.00</td>
</tr>
<tr>
<td>Intern Engineer/Landscape Architect/Geologist</td>
<td>$90.00 to $120.00</td>
</tr>
<tr>
<td>CAD or GIS Technician/Environmental Specialist/</td>
<td></td>
</tr>
<tr>
<td>Survey Technician/Environmental Technician</td>
<td>$65.00 to $145.00</td>
</tr>
<tr>
<td>Administrative</td>
<td>$55.00 to $115.00</td>
</tr>
</tbody>
</table>

Schedule Effective through September 30, 2023
TO: Members of the POP Committee

FROM: Merry Chris Smith, VGMC Operations Manager

DATE: September 14, 2022

RE: VHB Proposed Renewal Contract for 2022-23 Fiscal Year

Attached please find the proposed renewal contract submitted by VHB for professional planning services for the 2022-23 fiscal year.

In the proposed contract, Erika Hughes remains the Designated Project Manager for the VGMC, however, Tyler Johnson is no longer with VHB and is replaced by Grace Zheng assisting with the planning reviews.

The provisions of the contract are generally consistent with the current approved project, except that it includes changes in hourly rates and labor categories as follows:

<table>
<thead>
<tr>
<th></th>
<th>Current Hourly Rate and Labor Category</th>
<th>Proposed Hourly Rate and Labor Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager</td>
<td>$145/hour Labor Category 11</td>
<td>$190/hour Labor Category 15</td>
</tr>
<tr>
<td>Assisting Planner</td>
<td>$125/hour Labor Category 8</td>
<td>$100/hour Labor Category 6</td>
</tr>
</tbody>
</table>

As you will see, there is a 31% increase in the proposed Project Manager rate, or $45/hour. The assisting planner hourly rate proposes a 20% reduction in rate, or $25/hour. In a conversation with Ms. Hughes, she suggested that the overall effect with the proposed change in rates is not substantial since a good portion of the planning reviews are performed by the assisting planner.

The POP Committee will review the proposed contract and consider a recommendation to bring before the full commission at the September 28th regular meeting.

Ms. Hughes will be in attendance at the September meetings to address any questions you may have. If you have any questions in advance of the meeting, please do not hesitate to contact me.

Merry Chris
POP Committee:

Debbie Connors, Chair
Loretta Arthur
Jon Greene
Dwight Lewis
Philip Maroney
Larry Saffer
Bob Storke
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
VANASSE HANGEN BRUSTLIN, INC.
AND
VOLUSIA GROWTH MANAGEMENT COMMISSION (VGMC)
VGMC FISCAL YEAR 2022 – 2023

VHB PROPOSAL NO. 85059.22 (to be 63110.05)

July 25, 2022

This Agreement is composed of Part I, Part II and Exhibit A. Part I includes details of the services to be performed, compensation, and duration of contract. Part II (attached) contains the Terms and Conditions of Agreement, which are the general terms of the engagement between the Volusia Growth Management Commission, hereinafter referred to as the “VGMC”, and Vanasse Hangen Brustlin, Inc. VHB (VHB), 225 East Robinson Street, Suite 300, Orlando, FL 32801.

PART I

PROJECT DESCRIPTION

The VGMC is tasked by Section 202.3 of the Volusia County Charter to, “determine the consistency of the municipalities’ and the county’s comprehensive plans and any amendments thereto with each other.” Section 90-37 of the Volusia County Code further defines the VGMC’s powers and duties under the Charter.

Historically, VHB has provided to the VGMC the professional planning services necessary to meet the responsibilities defined in both the County Charter and Code of Ordinances. VHB has provided review of comprehensive plan amendments for consistency with the comprehensive plans of adjacent local governments and other substantially affected and aggrieved local governments, as well as a determination as to whether the proposed amendment adversely affects intergovernmental cooperation and coordination.

The scope of services provided to the Commission is more specifically described in the section below.
SCOPE OF SERVICES

1.1 Application Review

Upon receipt of an application from the VGMC Operations Manager, VHB will review the subject comprehensive plan amendment utilizing the rules identified in Sections 90-35(d) and 90-37 of the Volusia County Code. The following will be reviewed as applicable:

- Communication with the VGMC Operations Manager, VGMC Legal Counsel and VGMC Chairman.
- Verbal or written correspondence with the applicant local government, adjacent local governments, other substantially affected or aggrieved local governments, state or local regulatory agencies and interested third parties.
- Preparation of Requests for Additional Information ("RAI").
- Preparation of a Determination of Consistency memorandum to the Chairman for applications determined to be eligible for certification.
- Preparation of a staff report and presentation for applications which require a public hearing before the VGMC.
- Review of additional information as identified in Section 90-37(i) of the Volusia County Code.
- Upon prior approval from the Chairman, meet with the local governments and proponents of a comprehensive plan change to discuss and review planning issues on particular applications to the Commission; in the event there are exigent circumstances to attend such a meeting and prior approval from the chairman is not possible, authorization to attend said meeting may be obtained from the vice chairman or the secretary to the Commission.
- Attendance at VGMC regular meetings and provide oral report on planning activities unless otherwise notified by the VGMC Operations Manager at the time of agenda distribution.
- Attendance at VGMC committee meetings as directed by the committee chair.
- Undertake and/or participate in special projects and prepare reports, such as, but not limited to, the revisions to the Certification Rules, as directed by the Commission.

1.2 Other Duties

Upon prior approval from the Chairman, VHB may also:

- Represent the VGMC at hearings, meetings or workshops relating to comprehensive planning matters.

VHB represents that Erika Hughes will serve as the Project Manager. Review of comprehensive plan amendments will be primarily performed by Erika Hughes, with assistance from Grace Zheng with hourly rates of $190 and $100, respectively. VHB agrees that any intended change or substitution in the designated Project Manager or Principal must be approved in advance by the VGMC. To the extent that the billing rates in Exhibit A conflict with the billing rates specified in this Agreement, the billing rates in this Agreement shall prevail.
COMPENSATION

VHB will perform the Scope of Services contained in this Agreement on an hourly basis consistent with the hourly billing rates listed above.

VHB will provide the VGMC monthly notice identifying the assigned individual(s) and corresponding “labor category” of those staff member(s) performing VGMC-related work.

In addition to the labor compensation, VHB shall be reimbursed for expenditures made specifically for the aforementioned scope such as: printing and reprographics; travel and subsistence; computer charges; telephone charges; shipping, postage, and courier service charges; purchase of maps and similar documents; etc. These direct expenses will be billed at cost.

Term

VHB will begin performance of the above services on the date written authorization to proceed is received. The duration of this continuing services agreement shall be one (1) year. The VGMC shall have the option of extending this Agreement for additional one (1) year terms; however, this Agreement will revert to a month-to-month contract under the current terms until such time as a new Agreement is reached.

Terms of Representation

In the event VHB elects to withdraw from representation, or if the VGMC, by a weighted majority vote of the Commission, elects to terminate the services of VHB, a minimum of 30 days written notice will be provided to the affected party.

Conflict of Interest

VHB strives to maintain the highest ethical standards. VHB represents that it will not perform any services that conflict with, or will otherwise impair, its ability to perform to the work under this Agreement.

VHB agrees that, if changes, including additions, to the facts disclosed by it prior to execution of this agreement, occur during performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Client. Such disclosure may include a description of any action which VHB has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest.
Public Records

a. To the extent VHB is acting on behalf of the VGMC as provided under Subsection 119.011(2) of the Florida Statutes, VHB will:

   i. Keep and maintain public records required by the VGMC to perform the services under this Agreement.
   
   ii. Upon request from the VGMC’s custodian of public records, VHB will provide the VGMC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
   
   iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if VHB does not transfer the records to the VGMC.
   
   iv. Upon completion of the Agreement, transfer, at no cost, to the VGMC public records in possession of VHB or keep and maintain public records required by the VGMC to perform the service. If VHB transfers public records to the VGMC upon completion of the Agreement, VHB shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VHB keeps and maintains public records upon completion of the Agreement, VHB will meet the applicable requirements for retaining public records. Records stored electronically must be provided to the VGMC, upon request from the VGMC’s custodian of public records, in a format that is compatible with the information technology systems of the VGMC.

b. If VHB fails to provide the public records to the VGMC within a reasonable time VHB may be subject to penalties under Section 119.10 of the Florida Statutes. Further, the VGMC may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

c. IF VHB HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THEY WILL CONTACT THE VGMC’S CUSTODIAN OF PUBLIC RECORDS AT (386-947-1875, vgmc@volusia.org, 140 S. Beach Street, #305, Daytona Beach, FL 32114).
VANASSE HANGEN BRUSTLIN, INC. AUTHORIZATION

By: ________________________________________
    Fabricio Ponce
Title: Managing Director, Atlanta
Date: July 25, 2022

CLIENT AUTHORIZATION

The Volusia Growth Management Commission agrees with Part I which includes the Scope of Services and Compensation. Together they constitute the entire Agreement between Vanasse Hangen Brustlin, Inc. and the Volusia Growth Management Commission

By: ________________________________
Title: ________________________________
Date: ________________________________
STANDARD TERMS AND CONDITIONS. The engagement of VHB by Client is under the following terms and conditions. These terms and conditions are an integral part of the collective Agreement between Client and VHB.

SCOPE OF SERVICES. VHB shall perform the services set forth in the attached Scope of Services. Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin.

PERFORMANCE STANDARDS. VHB’s services require decisions that are not based upon science, but rather upon judgmental considerations. In the performance or furnishing of professional services hereunder, VHB, and those it is responsible for, shall exercise the degree of skill and care ordinarily exercised by similarly practicing professionals performing similar services under similar conditions in the same locality (“Standard of Care”). VHB shall be entitled to rely on the accuracy and completeness of data, reports, surveys, requirements, and other information provided by Client.

SCHEDULE. VHB shall perform its services as set forth in the Scope of Services as expeditiously as consistent with the Standard of Care and the orderly progress of the Work. VHB shall not be responsible for failure to perform or for delays in the services arising out of factors beyond the reasonable control or without the fault or negligence of VHB.

PAYMENT. The fee estimate for the proposed Scope of Services is valid for 60 days from the date of Proposal. All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. Retainers will be applied to the last invoice. A RETAINER OF $[ ] IS REQUIRED BEFORE SERVICES WILL COMMENCE.

Invoices will be rendered monthly and are due upon receipt. Any invoice unpaid more than 30 days after date of invoice will bear interest at 1-1/2 percent per month.

If Client fails to pay any invoice within 45 days of the date of invoice, VHB may, without waiving any other claim or right against Client or incurring any liability for delay, suspend the services until VHB has been paid in full. Sealed plans, final documents, reports, and attendance at meetings/hearings will not be provided unless payment for services is current.

If VHB is performing services for Client under multiple projects, payments must be current on all projects for services hereunder to continue. Client acknowledges VHB’s right to suspend services and withhold plans and documents, as provided above, if any payments are overdue. If services are suspended for 30 days or longer, upon resuming services VHB shall be entitled to expenses incurred in the interruption and resumption of its services. If services are suspended for 90 days or longer, VHB shall be entitled to expenses incurred in the interruption and resumption of its services and fees for remaining services shall be equitably adjusted.

The parties agree to coordinate invoices to assure timely payment. At minimum, VHB’s project manager and Client’s representative will confer as often as necessary about any issues involving invoicing and collections. Client’s representative will contact VHB’s project manager forthwith upon receipt of an invoice about any questions or issues concerning invoiced amounts. If Client’s representative and VHB’s project manager are unable to resolve any questions or issues, Client’s representative will line item any disputed or questionable amount and pay VHB. VHB, at its option, may revise and resubmit disputed amounts at a later date.

Should it become necessary to utilize legal or other resources to collect any or all monies rightfully due for services rendered under this Agreement, VHB shall be entitled to full reimbursement of all such costs, including reasonable attorneys’ fees, as part of this Agreement.

OWNERSHIP OF WORK PRODUCT. All work products (whether in hard or electronic form) prepared by VHB pursuant to the Agreement are instruments of service with respect to the Project and are not authorized, intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other Project. Any reuse by Client or a third person or entity authorized by Client without written verification or adaptation by VHB for the specific application will be at Client’s sole risk and without liability or legal exposure to VHB. Client shall release, defend, indemnify and hold harmless VHB from all claims, damages, losses and expenses, including attorneys’ fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle VHB to additional compensation at rates to be agreed upon by VHB and Client, third person, or entity seeking to reuse said documents.

Client recognizes that information recorded on or transmitted as electronic media, including CADD documents (“Electronic Documents”) is subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the Electronic Documents are provided to Client for informational purposes only and are not represented as suitable for any use or purpose.

VHB retains the copyright in all work products produced in connection with this Agreement, unless otherwise agreed to in writing by an authorized VHB representative. VHB licenses to Client on a non-exclusive basis the use of work products produced solely in connection with this Agreement. The license
may be revoked for any failure of Client to perform under this Agreement.

CERTIFICATIONS. VHB shall not be required to sign any documents, no matter by whom requested, that would result in VHB having to certify, guarantee or warrant the existence of conditions whose existence VHB cannot wholly ascertain. Any certification provided by VHB shall be so provided based on VHB’s knowledge, information, and belief subject to the preceding sentence, and shall reflect no greater certainty than VHB’s professional opinion developed through and consistent with the Standard of Care. VHB shall be compensated for any work necessary to assess project compliance with regulatory standards for purposes of such certification.

INSURANCE. VHB agrees to carry the following insurance during the term of this Agreement:
• Workmen’s Compensation and Employer’s Liability Insurance in compliance with statutory limits
• Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of $1,000,000 per occurrence and $2,000,000 in the aggregate
• Professional Liability Insurance with a limit of $1,000,000 per claim and in the aggregate
• Automobile Liability Insurance including non-owned and hired automobiles with a combined single limit of $1,000,000 per occurrence

Certificates of insurance will be furnished upon request. If Client requires additional insurance coverage, and it is available, Client agrees to reimburse VHB for such additional expense.

INDEMNITY. Client and VHB shall at all times indemnify and save harmless each other, their officers, and employees on account of damages, losses, expenses, reasonable counsel fees, and compensation arising out of any claims for damages, personal injuries and/or property losses sustained by any person or entity, to the extent caused by the negligent acts, errors or omissions of the indemnifying party, its employees, or subcontractors in connection with the Project, and/or under this Agreement.

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless VHB, its officers, employees and subconsultants from and against any and all claims, suits, demands, liabilities costs including reasonable attorneys’ fees, and defense costs caused by, arising out of, or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products, or material that exist on, about, or adjacent to the job site.

LIMITATION ON VHB’S RESPONSIBILITY AND JOBSITE SAFETY. VHB will not be responsible for the acts or omissions of contractors or others at the Site, except for its own subcontractors and employees. Neither the professional activities of VHB nor the presence of VHB or its employees or subconsultants at a project site shall relieve the other parties on this project of their obligations, duties, and, including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. VHB and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. Client agrees that Contractor shall be solely responsible for job site safety and warrants that this intent shall be carried out in Client’s contract with Contractor.

ALLOCATION OF RISK. In recognition of the relative risks and benefits of the Project to both Client and VHB, the risks have been allocated such that Client agrees that to the fullest extent permitted by law, VHB’s total liability in the aggregate to Client and any persons or entities claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project and/or this Agreement from any cause or causes, including, but not limited to, VHB’s negligence, errors, omissions, strict liability, statutory liability, indemnity obligation, breach of contract or breach of warranty shall not exceed the higher of $50,000 (fifty thousand dollars), or ten (10) percent of the compensation actually paid to VHB. Client and VHB may agree to a higher limitation of liability for an increased fee.

DISPUTE RESOLUTION. All questions in dispute under this Agreement shall be submitted to non-binding mediation as a condition precedent to the institution of legal proceedings. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of the notice. The parties shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties be unable to agree on a resolution of the dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

LEGAL SUPPORT. To the extent VHB is required to respond to any dispute resolution process, including, but not limited to, requests for document production, discovery or a request to appear in any deposition or legal proceeding, which is related to the Scope of Services but does not arise out of VHB’s negligent
acts, errors or omissions, Client shall compensate VHB for all costs incurred by VHB, including reasonable attorneys’ fees.

**DESCRIPTIVE HEADINGS AND COUNTERPARTS.** The headings contained in this Agreement are for convenience of reference only and shall not constitute a part hereof, or define, limit or in any way affect the meaning of any of the terms or provisions hereof. This Agreement may be executed in two or more counterparts, and any party hereto may execute any such counterpart, which, when executed and delivered, shall be deemed to be an original and all of such counterparts taken together shall be deemed to be one and the same instrument.

**EXCLUSIVE REMEDIES.** In the event that any dispute is not remedied through the alternative dispute resolution procedures set forth herein, all claims, actions, and rights of action arising from or relating in any way to this Agreement or the services performed thereunder, whether in contract, tort, indemnity and all other rights of action whatsoever, shall be filed in a court of competent jurisdiction within three years of the completion of such services, or all such claims, actions and rights of action shall be waived. Recovery under this Agreement shall be limited by the parties’ agreement on Allocation of Risk and the remainder of this section.

Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any liquidated, incidental, special, indirect or other consequential damages incurred, regardless of the nature of the cause or whether caused by Client or VHB, or their employees, subconsultants, or subcontractors. Consequential damages include, without limitation, loss of use, loss of profits, loss of production, or business interruption; however, the same may be caused.

VHB and Client waive all claims against each other arising out of or related to this Agreement or the services to the extent that losses, damages, and liabilities associated with such claims have been compensated by the proceeds of property insurance or any other insurance policy.

VHB makes no warranties or guarantees, express or implied, under this Agreement or any other contract document with respect to its provision of professional services. In entering into this Agreement, Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which Client relied in entering into this Agreement.

**NO THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either Client or VHB. In addition, nothing herein shall be construed as creating a contractual relationship between Client and any VHB employee, representative, or consultant. Client agrees that in the event of a dispute regarding this Agreement or the services rendered by VHB hereunder, Client shall only seek recourse against VHB and waives any right to pursue a claim against VHB’s individual directors, officers or employees.

VHB’s commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce VHB’s Scope of Services, Client hereby agrees to release, hold harmless, defend, and indemnify VHB from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

**SEVERABILITY.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

**TAXES.** Any taxes or fees, enacted by local, state, or federal government and based on gross receipts or revenues, will be invoiced to and payable by Client as an additional amount due under this Agreement.

**PROJECT SPECIFIC PROVISIONS.** To the extent the Scope of Services involves any of the following services/geographies, the following general provisions apply accordingly:

**AMERICANS WITH DISABILITIES ACT (ADA).** Client understands and agrees that ADA standards are evolving and subject to varying, potentially contradictory interpretations and applications. VHB will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances, and regulations as they apply to the project. VHB cannot and does not warrant or guarantee that Client’s Project will comply with all ADA requirements or ADA interpretations or other applicable regulatory interpretations.

**CLIMATE CHANGE/FLOOD ANALYSIS.** Consultant shall not be responsible or liable for any damages, losses, litigation, expenses, counsel fees and compensation arising out of any claims, damages, personal injuries and/or property losses related to flooding conditions whether directly or indirectly due to flood water damage, and Client shall at all times indemnify and hold harmless VHB, its respective officers, agents and employees on account of any related claims, damages, losses, expenses and counsel fees related thereto.

**CONSTRUCTION PHASE SERVICES**

**SITE VISITS.** VHB shall make periodic site visits upon the request of Client or as otherwise agreed in writing by Client and VHB for
the limited purpose of determining whether work is in general conformance with VHB’s plans and specifications. Such visits are not intended to be an exhaustive check or a detailed inspection of Contractor’s work. VHB shall not supervise or have control over Contractor’s work nor have any responsibility for construction ways, means, methods, techniques, sequences, or procedures selected by Contractor nor for Contractor’s safety precautions or programs in connection with the Work.

SHOP DRAWINGS. VHB’s review and approval of submittals such as shop drawings, product data, samples, and other data, shall be for the limited purpose of checking for conformance with the design concept and the information in VHB’s documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades, or construction safety precautions, all of which are the sole responsibility of Contractor and other unrelated parties. Review of a specific item shall not indicate that VHB has reviewed the entire assembly of which the item is a component. VHB shall not be responsible for any deviations from VHB’s documents or other documents that are not brought to the attention of VHB in writing by Contractor. VHB shall not be required to review partial submissions or those for which submission of correlated items have not been received.

GEOTECHNICAL SERVICES. Client understands that VHB does not perform geotechnical services directly and, if requested, will retain a geotechnical subconsultant on behalf of Client, and VHB shall rely on the accuracy and completeness of data furnished as if the geotechnical services were contracted directly through Client.

TANK INSPECTION. Client will provide VHB with available underground storage tank (UST) documentation as necessary. VHB assumes that the documentation and site plans will be in order, be complete and meet regulatory compliance standards. VHB’s inspection services are to fulfill regulatory requirements and do not include invasive testing or equipment calibration and testing. Accordingly, Client expressly agrees that VHB shall have no liability for equipment functioning or malfunctioning, product releases or spills.

LSP SERVICES – PROJECTS LOCATED IN MASSACHUSETTS. In accordance with the Massachusetts General Laws Chapter 21E, the performance of the services contained in this Agreement may require the engagement of a Licensed Site Professional (LSP) registered with the Commonwealth of Massachusetts under Massachusetts General Law Chapter 21A and the regulations promulgated by the Massachusetts Department of Environmental Protection (MADEP) thereunder (collectively the LSP Program). These laws and regulations place upon the LSP certain professional obligations owed to the public, including in some instances a duty to disclose the existence of certain environmental contaminants to the MADEP. In the event that any site for which VHB has provided LSP services is audited by MADEP pursuant to the provisions of the Massachusetts Contingency Plan, VHB shall be entitled to additional compensation to provide such services as may be necessary to assist Client in its response to MADEP.

Client understands and acknowledges that in the event the LSP’s obligations under the LSP Program conflict in any way with the terms and conditions of this Agreement or the wishes or intentions of Client, the LSP is bound by law to comply with the requirements of the LSP Program. Accordingly, Client recognizes that the LSP shall be immune for all civil liability resulting from any alleged and/or actual conflict with the LSP Program. Client also agrees to hold VHB and its LSP harmless for any claims, losses, damages, fines, or administrative, civil, or criminal penalties resulting from the LSP’s fulfillment of its obligations under the LSP Program.

PROJECTS LOCATED IN FLORIDA. FLORIDA STATUTES SECTION 558.0035 (2013), AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ECONOMIC DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS AGREEMENT
## EXHIBIT A

### VHB HOURLY BILLING RATES

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Reimbursable and subconsultant expenses are billed at cost plus 10%.
TO: Members of the POP Committee  
FROM: Merry Chris Smith, VGMC Operations Manager  
DATE: September 14, 2022  
RE: GrayRobinson Proposed Renewal Contract for 2022-23 Fiscal Year  

Attached please find the proposed renewal contract submitted by GrayRobinson to provide legal services for the 2022-23 fiscal year.

The provisions of the contract are consistent with the current approved contract, except that it includes an increase in hourly rates as follows:

1) Attorney rate from $225/hour to $250/hour  
2) Paralegal rate from $105/hour to $130/hour

Heather advised that the proposed attorney hourly rate of $250 continues to remain below the $295/hour they ordinarily bill other units of local government (cities/special districts).

Following is background information relating to the GrayRobinson contract:

- This is only the 5th rate increase proposed by GrayRobinson in the 35+ years they have represented the VGMC. The most recent increase was in 2019 when the hourly rates increased from $200 to $225 for attorneys, and $95 to $105 for paralegals.

- Over the past three years, the average attorney hours billed was less than 4 hours per month. Current fiscal year to date, the average attorney hours billed is less than 3 hours per month.

- Over the past three years, we have been billed less than 2 hours for the entire budget year for paralegals. Typically, this is for research done to prepare the annual weighted vote resolution.

- Over the past three years, our total annual legal expenses have averaged $10,000. Through 7/30/22 (ten months into the current budget year), we have incurred approximately $4,700 in total legal expenses.
Following are additional comments:

As you know, GrayRobinson has provided legal representation since the inception of the VGMC over 35 years ago. The institutional knowledge and professionalism the firm provides is outstanding.

Heather has been a key player of the VGMC "team". She (and her staff) are always very responsive and maintain a very positive relationship with our professional planning staff, myself, and members of the commission.

As a firm, GrayRobinson provides a full menu of attorney's available to the VGMC (i.e. litigation, etc.) all at the same hourly rate.

When the commission last put out a bid for legal services in 2015, we received two submittals -- one from GrayRobinson, and the other from an attorney in Tampa who proposed a $7,000 monthly retainer + other costs.

With the limited number of legal hours necessary for routine VGMC business as demonstrated in the information above, the impact of the proposed $25/hour increase on the VGMC budget should be nominal.

The POP Committee will review the proposed contract and consider a recommendation to bring before the full commission at the September 28th regular meeting.

Ms. Ramos will be in attendance at the September meetings to address any questions you may have. If you have any questions in advance of the meeting, please do not hesitate to contact me.

Merry Chris

POP Committee:

Debbie Connors, Chair
Loretta Arthur
Jon Greene
Dwight Lewis
Philip Maroney
Larry Saffer
Bob Storke
June 15, 2022

Sid Vihlen, Jr., Chairman  
Volusia Growth Management Commission  
140 S. Beach Street, Suite 305  
Daytona Beach, FL 32114  

Re: Legal Representation Contract for Services for Fiscal Year 2022 / 2023

Dear Mr. Vihlen:

This letter is sent in response to your request for a contract letter to be reviewed by the Personnel, Operations and Procedures (POP) Committee. This letter is for the fiscal year 2022/2023 for our firm’s legal representation of the Volusia Growth Management Commission (the “Commission”).

Over the years, it has been our experience that things go more smoothly if we have a clear understanding of your needs and the role we need to play. The purpose of this engagement letter is to confirm an agreement concerning representation and the payment of our fees and expenses. This engagement letter will govern all subsequent matters in which we may become involved on your behalf unless a separate arrangement is made.

We will do our very best to meet your needs in any matters we undertake for you, but as you know, we cannot and do not make any representations or warranties concerning the outcome. We will give you our best advice, render opinions, and seek to obtain the desired result. In this regard, it is most important that we communicate regularly.

As general counsel to the Commission, our duties will include:

(i) Attendance at all meetings of the full Commission (unless our attendance is deemed not necessary by the chairman or his designee) at which we will provide oral reports on legal activities, if any;

(ii) Analysis of and comments on applications to the Commission for consistency certification when a request for comment is received from planning staff;

(iii) Preparation of draft resolutions regarding consistency certification applications for consideration by the Commission;
(iv) Consultations with the Commission Operations Manager and chairman on procedural matters and prepare procedural memorandums as so directed in the Commission’s Rules of Procedure;

(v) Upon prior approval from the chairman, meeting with the local governments and proponents of a comprehensive plan change to discuss and review legal issues on particular applications to the Commission; in the event there are exigent circumstances to attend such a meeting and prior approval from the chairman is not possible, authorization to attend said meeting may be obtained from the vice chairman or the secretary to the Commission;

(vi) Attendance at the Commission’s committee meetings as directed by the committee chair;

(vii) Undertaking special projects and preparing reports as directed by the Commission; and

(viii) Immediately addressing and responding to new litigation matters so as to preserve jurisdiction of the Commission and subsequently present the litigation matter to the full Commission for direction on the litigation position of the Commission and for direction as to whether general counsel shall pursue such litigation on behalf of the Commission.

GrayRobinson will begin performance of the above services on the date written authorization to proceed is received. The duration of this continuing services Agreement shall be one (1) year. The Commission shall have the option of extending this Agreement for additional one (1) year terms; however, this Agreement will revert to a month-to-month contract under the current terms until such time as a new Agreement is reached.

In the event GrayRobinson elects to withdraw from representation, or if the Commission, by a weighted majority vote of the Commission, elects to terminate the services of GrayRobinson, a minimum of 90 days written notice will be provided to the affected party.

GrayRobinson strives to maintain the highest ethical standards. GrayRobinson is governed by the Florida Bar’s Rules of Professional Conduct, including but not limited to, Rule 4-1.7, Conflict of Interest, Current Clients, and Rule 4-1.9, Conflict of Interest, Former Client, and represents that GrayRobinson will at all times perform any and all services under this Agreement in compliance with the Rules of Professional Conduct.

GrayRobinson agrees that, if changes, including additions, to the facts disclosed by it prior to execution of this Agreement, occur during performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Commission. GrayRobinson shall not undertake any representation of other clients which may result in a conflict of interest, without first obtaining written informed consent from each affected client(s), including the Commission, prior to commencement of such representation consistent with Rule of Professional Conduct 4-1.7(b).
I am submitting the following arrangements with our firm regarding fees and costs:

1. Our fees will be based on an hourly rate of $250.00 for attorneys and $130.00 for paralegals. As you are aware, this hourly attorney and paralegal rate is considerably below the hourly rates normally charged our clients. I will be primarily responsible for your work, and will be assisted by other legal staff as necessary, including, but not limited to our paralegal, Stephanie Cross, who may also work on matters related to the Commission.

2. Our statement for fees and costs will be submitted on a monthly basis and are normally to be paid within thirty days of receipt of the statement. Included with this letter, please find a copy of our firm’s policy regarding fees and costs and document and file retention. All conditions in that document are incorporated by reference as a part of this fee letter. Please read the document carefully. Also attached is a copy of our current cost recovery rates/charges. We will continue to reduce photocopying costs for the Commission and mileage will be computed at 44.5 cents per mile for all travel related to the Commission per Section 112.061(7)(d)1 of the Florida Statutes.

If the foregoing meets with the approval of you and the Commission, please have the Commission’s authorized representative execute this letter agreement in the space provided, and return it to me. Your acceptance of our representation will include our agreement regarding fees and costs.

Our firm looks forward to continuing to work with you and all the Commissioners in the future. If you have any questions regarding this representation letter or any other matter, do not hesitate to call me.

Sincerely,

GrayRobinson, P.A.

Heather M. Ramos

HMR/jg

Enclosures
cc: Merry Chris Smith, Operations Manager
POLICY REGARDING FEES AND EXPENSES

FEES:

Quality legal services and good results require ability and effort. These are our “stock in trade.” Our fees are based on our skill, the time expended, and the responsibility involved. Our fees will be solely based on the time devoted to the matter and professional skills involved.

EXPENSES:

You will be charged a reasonable rate for postage, reproduction, couriers, express mail, long-distance telephone, travel costs and other costs. We may also use computerized research services to assist in handling your matters. This service will be used when we believe that it will save you money to do so. Expenses incurred or advanced on your behalf will be itemized on the statement.

BILLING:

You will be billed periodically, usually monthly. There will be a service charge of 1-1/2% per month on all accounts not paid within 30 days of the date the statement is mailed to you. Interest charges will be added on to any outstanding balance and will be reflected in subsequent statements.

In the event you should disagree with or question any amount due under an invoice, you agree to communicate such disagreement to us, in writing, within thirty (30) days of the invoice date. Any disagreement you may have with a bill that is not communicated to us within that period shall be deemed waived.

COMMENCEMENT OF REPRESENTATION:

Our representation will not commence until we receive a signed copy of the letter to which this statement is attached, together with payment of any retainer specified therein.

WITHDRAWAL FROM REPRESENTATION:

We reserve the right to withdraw as your counsel in the event you fail to honor your agreement with respect to our legal fees or for any just reason as permitted or required under the Florida Code of Professional Responsibility or as permitted by the rules of courts of the State of Florida. In the event of our withdrawal, you will promptly pay for all services rendered by us prior to the date of withdrawal.

DOCUMENT AND FILE RETENTION:

In representing the Volusia Growth Management Commission, our firm could be deemed to be “acting on behalf” of the Commission as contemplated under section 119.0701 of the Florida Statutes. In an abundance of caution, we have always complied in such representations with the
letter and spirit of Florida’s Public Records Act, Chapter 119 of the Florida Statutes including specifically subsection 119.0701(2), which requires the firm to:

a. Keep and maintain public records required by the Commission to perform the services under this Agreement.
b. Upon request from the Commission’s custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or 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 for the duration of the Agreement term and following completion of the Agreement if the firm does not transfer the records to the Commission.
d. Upon completion of the Agreement, transfer, at no cost, to the Commission all public records in our possession or keep and maintain public records required by the Commission to perform the services under this Agreement. If the firm transfers all public records to the Commission upon the expiration or termination of this Agreement, the firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the firm keeps and maintains public records upon the expiration or termination of this Agreement, the firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission’s custodian of public records, in a format that is compatible with the information technology systems of the Commission.

If we fail to provide the public records to the Commission within a reasonable time we may be subject to penalties under Section 119.10 of the Florida Statutes. Further, the Commission may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate the legal representation contract.

**IF GRAYROBINSON HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COMMISSION’S CUSTODIAN OF PUBLIC RECORDS AT vgmc@volusia.org, 386-947-1875, 140 S. Beach St., Suite 305.**

You should be aware of our document and file retention policy. If and when representation of the Commission is concluded, the file will be officially closed. Once the file is closed, it may be sent to off-site storage, and there may be costs associated with retrieval of information from the file. The firm retains stored and closed files for a period of ten (10) years after which time they may be destroyed. This period is twice as long as that required under Florida retention laws. Thus, if there are any documents which you need from the documents we possess, we recommend that you obtain them at the termination or expiration of this Agreement.
CLIENT CHARGES

Express Mail (Federal Express) – Fed Ex Discounted Charges.

Express Mail (UPS) – Actual UPS Charges.

Computerized Research (Lexis/Westlaw) – Actual direct usage costs.

Courier Service (Outside Courier) – Actual charges.

Postage and Handling – Actual Postage.
TO: Members of the VGMC Budget & POP Committees

FROM: Merry Chris Smith, Operations Manager

DATE: September 14, 2022

RE: 2022-23 VGMC Office Lease Renewal

Attached please find the annual lease renewal for the VGMC office located at 140 S. Beach Street, #305, Daytona Beach which is scheduled to begin October 1, 2022.

The new annual rent totals $8,667 ($722.25/month) which represents a 7% increase over the current rent. Utilities are included in the rent, and all other provisions of the lease are generally consistent with the current lease.

Our total rent budget for 2022-23 is $9,000 which is sufficient to cover the office lease, however, we also have off-site file storage rent that runs approximately $480/year. Collectively, this will result in a small overage (should be less than $200) in the rent budget in 2022-23, however, there should be more than sufficient funds in the overall operating budget to absorb the overage.

I met with the General Manager of the building in an attempt to minimize the increase so that we would remain within budget. He remains firm on the 7% increase due to inflation, adding that most other tenants in the building are subject to a 9-9.5% increase. He also pointed out that there have been a number of years in which the VGMC did not receive any increase in rent, which is correct.

We are providing this information for discussion by both the POP and Budget Committees at their respective meetings, and are hopeful the committees will bring a recommendation to the full commission to authorize the VGMC Chair to execute the lease for the 2022-23 fiscal year.

If you have any questions in advance of the meetings, please do not hesitate to contact me.

Thank you,

Merry Chris
KRESS LEASE ABSTRACT

DATE: August 30, 2022

OWNER/LESSOR: Mac II of Volusia
140 S. Beach St. Suite 310
Daytona Beach, FL 32114

leasing@kressdaytona.com
386-290-0411
Tax ID: 26-1611808

TENANT/LESSEE: Volusia Growth Management Commission
vgmc@volusia.org
386-947-1875

PREMISES: 140 S. Beach St. Suite 305
Daytona Beach, FL 32114

AREA: Approximately 360 Square Feet

PERMITTED USE: Professional Office

LEASE TERM: October 1, 2022 through September 30, 2023

MINIMUM RENT — MONTHLY $722.25

INTERNET: $50/month

TOTAL MONTH: $772.25

SECURITY DEPOSIT: None Required

OCCUPANCY: Occupancy may continue uninterrupted
This Lease, dated August 30, 2022, between Mac II of Volusia, LLC, (hereinafter the “Lessor”) and Volusia Growth Management Commission (hereinafter the “Lessee”).

1. DESCRIPTION OF PREMISES

(a) In consideration of the mutual covenants and agreements set forth herein, Lessor leases to Lessee and Lessee leases from Lessor for the rental and on the terms and conditions hereinafter set forth the office space deemed herein by the parties to consist of Suite 305 which is approximately 360+/- rentable square feet (hereinafter the “Premises”) in that real property situated in the City of Daytona Beach, County of Volusia, State of Florida with the address 140 South Beach Street, Daytona Beach, Florida 32114 (hereinafter the “Building”), to be used as professional offices.

(b) Lessor shall allow Lessee reasonable access to the building electric lines, feeders, wiring, telephone rooms, electrical closets and other conduits, pipes and facilities to accommodate Lessee’s telecommunications/internet systems. Lessee’s right to the use of and access to the Lessor’ facilities shall be without charge but for the rent provided for herein.

(c) Lessee acknowledges that the Building contains areas intended for the use in common by all occupants of the Building. As long as Lessee occupies the Premises, Lessee and its employees, agents and invitees shall have the right to use, in common with Lessor, its successors, assigns and other Lessees, all of the common areas.

2. TERM

The Term of this Lease shall be Twelve (12) months, commencing on October 1, 2022 and terminating September 30, 2023 both dates inclusive unless sooner terminated as herein provided.

3. RENT

Tenant covenants and agrees to pay rent plus applicable Florida sales tax in advance on the first (1st) day of each calendar month during the Term and without notice, demand, abatement, deduction, counterclaim, set-off, defense or otherwise, in lawful money of the United States, to Lessor at Lessor’s address as set forth herein this Lease, throughout the Term of this Lease, as follows:

(a) For the twelve month Term of the Lease as set forth in Paragraph 2 hereof, Lessee agrees to pay Lessor Base Rent for the leased premises the sum of Eight Thousand Six Hundred Sixty-Seven Dollars ($8,667.00) payable in quarterly installments as follows: Two Thousand One Hundred Sixty-Six and 75/100
Additionally, Rent shall be prorated for any fraction of a month, when applicable, based on the number of days within the fractional month.

(b) Lessor may utilize internet service offered via Lessor’s system for Fifty Dollars ($50.00) per month, payable as additional rent. This service shall provide one wired access point. Wifi or additional outlets are at Lessee’s expense.

(c) It is Lessee’s obligation to pay rent on the first day of each quarter at the following address or such other address as may be designated by Lessor:

Mac II of Volusia, LLC  
140 S. Beach St. Suite 310  
Daytona Beach, FL 32114

4. SECURITY DEPOSIT

No Security Deposit is required.

5. USE

Lessee shall not occupy, use, or permit any portion of the Premises to be occupied or used, for any business or purpose other than the use as set out in Section 1. Lessee shall not create any nuisance, commit waste or interfere with, annoy or disturb any other Lessees or occupants in the Kress Building.

6. UTILITIES AND CLEANING

The Lessor agrees to furnish the Leased Premises, at its expense, as follows:

(a) Electricity commensurate with the present electrical system and wiring supplying electricity for lights and other usual and ordinary office purposes but not including heavy power consuming machinery or equipment nor computer equipment beyond what may be considered ordinary and reasonable for office use. Electrical demands requiring the installation of additional outlets or circuits will be accomplished at the expense of the Lessee.

(b) Tenants will insure reasonable heating and air conditioning settings are maintained while the suite is occupied. Thermostat setting should be no lower than 70 for cooling and no higher than 75 for heating. After business hours and on the weekends, tenants are responsible for setting thermostats no lower than 78 degrees for cooling and no higher than 65 degrees for heat.

(c) Water supplied for any existing facilities.

(d) Lights in need of replacement.
(e) Reasonable janitorial service for the common areas and restrooms to include the normal and usual cleaning services except on Saturdays, Sundays and holidays.

If the Lessee shall require electrical current or install electrical equipment including, but not limited to, equipment using current which will in any way increase the amount of electricity usually furnished for use in general office space, Lessee will obtain written approval of the Lessor and pay monthly for the additional direct expense involved including any installation cost thereof. Lessor shall not be liable or responsible in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or interference with service involving water, heat, gas, air conditioning, electric current for light and power, telephone or any other utility services. Lessor, however, shall make every diligent effort to cure such impairment, interruption, stoppage or interference with any utility service after due notice from Lessee of such need.

7. LICENSES, TAXES AND FEES

Lessee agrees at its sole cost to pay for all sales, use or other tax applied on rental payments and security deposit which may now be in effect or which may be levied in the future and to pay all licenses and fees incident to the conduct of its business in the Leased Premises and to protect Lessor from any charges incidental thereto. Should any such charges not be paid by Lessee, Lessor has the right to make appropriate payments, and any such charges as are paid by Lessor shall be due from Lessee with the next ensuing monthly payment under this Lease.

8. PARKING

The Lessee, its employees, agents, customers and invitees shall have a non-exclusive right in common with Lessor, its employees, agents, customers and invitees and the Lessees employees, agents, customers and invitees of all other occupants of the building containing the Leased Premises to reasonable use of non-designated parking spaces located in the public area area behind said building for parking.

9. INSURANCE

(a) Lessee agrees to carry at its own expense an Owner/Lessor and Lessees Liability Insurance Policy from a company satisfactory to Lessor with a combined single limit for bodily injury and property damage of $500,000 per occurrence / $1,000,000 aggregate and damage to rented premises of not less than $100,000. Such insurance shall be for the joint benefit of Lessor, and Lessee shall name Lessor as additional insured and shall provide that Lessor shall be given at least ten (10) days advance written notice in the event of cancellation. A copy of said policy shall be delivered to Lessor within ten (10) days of occupancy of the Leased Premises.
(b) Irrespective of the adequacy of said insurance, Lessee shall indemnify and save Lessor free and harmless from any and all claims, actions, damages, expenses (including without limitation reasonable attorneys’ fees) and liability whatsoever arising out of or in any way connected with injury (including death) or property damage to any person, firm, corporation, or other entity, including Lessor, arising directly or indirectly from the use of occupancy of said Leased Premises or any part thereof by Lessee, its agents, sub Lessees, assigns, contractors, employees or invitees.

(c) Lessee agrees that it will not cause or permit any use or vacation of the Leased Premises which will cause the insurance costs of any other party, including Lessor or other Lessees adjacent to the Leased Premises, to increase, or their insurance to be invalidated. Unless consented to in writing by Lessor, Lessee shall not suffer anything to be or remain upon or about the Leased Premises, nor carry on nor permit upon the Leased Premises any trade or occupation, not suffer to be done anything which may result in an increased or extra premium payable for the insurance of the Leased Premises against fire, or other perils included under standard extended coverage insurance. If the Lessor has granted consent, then the Lessee shall pay any such increased or extra premium within ten (10) days after the Lessee shall have been advised of the amount thereof. Should any such extra premium or increase in premium not be paid by Lessee, Lessor has the right to make appropriate payments, and any such charges as are paid by Lessor shall be due from Lessee with its next ensuing monthly payment under this Lease.

(d) The Lessee agrees to deliver to the Lessor on the inception date or renewal date of each such policy as described above the usual certificates issued by the insurance carrier certifying that such insurance is in force. Nevertheless, the obligation of the Lessee to the Lessor shall not be limited to the amount of such insurance. The said insurance may be included in what is generally known as a blanket policy and shall not be canceled without ten (10) days prior written notice to Lessor.

10. ALTERATIONS

(a) Lessee shall not make or allow to be made any alterations, additions or improvements (collectively “Alterations”) in or to the Premises, including interior and exterior painting, without first obtaining Lessor’s written consent, which consent shall not be unreasonably withheld. Before making any such Alterations, Lessee shall be required to provide Lessor with prior written notice describing and depicting the details of such Alterations.

(b) Lessee agrees that all Alterations shall be done at Lessee’s sole cost and expense and in a good and workmanlike manner, that the structural integrity of the Building shall not be impaired and that no liens shall attach to all or any part
of the premises or the Building by reason thereof as provided in Section 10(d) hereof. Lessee shall obtain, at its sole expense, all permits required for such work.

(c) Unless otherwise elected by Lessor as hereinafter provided, all Alterations made by Lessee shall become the property of Lessor and shall be surrendered to Lessor on or before the Lease expiration date, except as otherwise set forth in this Lease. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture or any other items that can be removed without material harm to the Premises will remain Lessee’s property (collectively, “Lessee’s Owned Property”) and shall not become the property of Lessor but shall be removed by Lessee, at its sole cost and expense, not later than the Lease expiration date. When granting consent for any Alterations, Lessor shall indicate whether it will require the removal of those Alterations prior to the Lease expiration date. Lessee shall repair at its sole cost and expense all damage caused to the Premises or the Building by the removal of any Alterations that Lessee is required to remove or Tenant Owned Property. Lessor may remove any Lessee Owned Property or Alterations that Lessee is required but fails to remove at the Lease expiration date and Lessee shall pay to Lessor the reasonable cost of removal. Lessee’s obligations under this Section 10 shall survive the expiration or earlier termination of this Lease.

(d) NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE OR TO ANYONE HOLDING THE PREMISES OR ANY PART THEREOF AND THAT NO CONSTRUCTION OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PREMISES OR THE BUILDING. Nothing in this Lease shall be construed as constituting the consent of Lessor to or for the performance by any contractor, subcontractor, laborer, material man or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof. Lessee shall pay or use to be paid all costs of labor, services and materials supplied in the prosecution of any work done in the Premises by Lessee, and Lessee shall keep the Premises free and clear of all mechanics’ liens and other liens arising out of any work done by Lessee or persons claiming under Lessee. All contractors, subcontractors, laborers, material men, vendors and any other party now or hereafter furnishing any labor, services or materials to Lessee with respect to any portion of the Premises are hereby charged with notice that they must look exclusively to Lessee to obtain payment for same. Neither Lessee nor any subtenant shall have any power to do any act or make any contract which may create a lien upon the interest of Lessor in and to the Premises. Lessee shall deliver written notice of the provisions of this Section 10(d) to all contractors performing work in the Premises. In addition, if requested by Lessor, Lessee shall execute a memorandum of this Lease, in recordable form, confirming that the terms of this Lease expressly provide that the interest of
Lessor in the Premises and the Building shall not be subject to liens for improvements made by Lessee and confirming any other information as may be required by Chapter 713, Florida Statutes, to prevent the interest of Lessor in the Premises and/or the Building from being subject to liens for improvements made by the Lessee. The memorandum of Lease shall be in a form acceptable to Lessor and shall be executed and delivered by Lessee to Lessor within ten (10) days after Lessor’s request therefor.

11. LIEN OF THE LEASEHOLD

A first lien is expressly reserved by the Lessor and granted by the Lessee upon all personal property located in or upon the Leased Premises and all improvements, light fixtures, store fixtures, water fixtures and all other fixtures erected or put in place or that may be erected or put in place upon the Leased Premises by or through the Lessee or other occupants, said lien being imposed for the payment of rent and also for the satisfaction of any causes of action which may accrue to the Lessor by provisions of this Lease, all in accordance with Chapter 83 of the Florida Statutes.

12. WIRING INFRASTRUCTURE

(a) Lessee acknowledges that electrical panels, including telephone and internet connections, (the “Panels”) which provide junctions to one or more offices on the Leased Premises may continue to provide services to other offices on the Leased Premises. Said Panels shall be considered part of the infrastructure of the building on the Leased Premises and shall remain in place. Any telephone, internet or other electrical wiring or lines entering into or exiting from the Panels shall not be altered in any way by Lessee.

(b) Should Lessee, its agents, contractors, guests or invitees, directly or indirectly cause any disruption or interruption in the utilities, telephone, internet or electrical services of any other Lessee or occupant of the offices on or adjacent to the Leased Premises, Lessee shall bear the cost of restoring said services, along with any damages caused thereby. Any disruption in said services shall immediately be reported to the property manager who will diligently work to restore said service.

(c) If access to the Panel requires Lessee, any other Lessee, its contractors or agents to enter into an office not occupied under this Lease by said party, they shall first obtain consent from the property manager, who shall provide access to the Panel, and who shall accompany said party during said event. If the Panel is located in Lessee’s office area, Lessee shall permit the property manager or persons authorized by him to access the Panel to perform work, with said access not limited by time.
13. **NUISANCES, SIGNS, POSTERS, WALL DECOR AND CLEAN AIR**

a. Lessee shall not commit or suffer to be committed upon the Leased Premises any nuisance or other act or thing which may disturb the quiet enjoyment of any other Lessee of the building of which the leased Premises are a part. By the way of illustration and not as a limitation, Lessee covenants and agrees that no loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of Lessee’s Premises. Moreover, Lessee covenants and agrees that it will not conduct any activity on said premises that will constitute a public nuisance or whereby unreasonable and objectionable noises will be created or odors emitted. The smoking of tobacco products, vaping, electronic cigarettes, candles, incense, cooking and the use of hot plates are specifically prohibited.

b. Lessee shall not place or maintain or permit to be placed or maintained and shall promptly remove any signs or advertising of any kind whatsoever on the exterior of the building in which the Leased Premises are located, or on any exterior windows in said building or elsewhere within the Leased Premises or on other public areas of the building in which the Leased Premises are located except such numerals and lettering on doorways as may be approved and permitted by Lessor. Lessor shall have the right to specify the size, design, content and materials to be used and location upon or adjacent to the door of any such numerals and lettering.

c. Nothing shall be affixed to Lessee’s entry door or window without prior Lessor approval. All signs are to be designed and applied by a business sign professional. Temporary “hand-made” signs may be removed by Lessor if displayed more than thirty (30) days beyond Lessee’s first date of occupancy. Upon termination of this agreement, Lessee agrees to remove from the windows of its premises all signs that had been put in place.

d. In order to promote uniformity and an aesthetically attractive appearance within the building, no posters, adhesive decals, pictures and/or signs of any type, other than a basic and conservative sign identifying Lessee’s business, as approved by the Lessor, are to be displayed in or on windows.

e. Neon signs, lighted signs, mechanical or electric signs of any type are not permitted.

f. Pictures posters or other wall hangings displayed on the walls of Lessee’s premises are to be affixed with 3M command strips or picture hooks nailed to the walls. Tape or other adhesives are not permitted.

g. No fasteners of any type may be applied to wood doors or wood door frames.
14. PETS

Except for certified service or guide dogs for persons with disabilities, no pets are allowed (even temporarily) in the Kress Building. Repeat violations by Lessee may result in termination of this Lease Agreement or other remedies legally permitted under this Lease.

15. CASUALTY

(a) If the premises or any of the common areas are destroyed or damaged by fire or other casualty so that Lessee is unable to occupy the Premises for its Permitted Use and, in Lessor’s judgment, repairs cannot be completed within forty-five (45) days after the date of the damage or destruction, Lessor may terminate this Lease effective as of the date of the damage or destruction by giving Lessee written notice within ten (10) days of the date of the damage or destruction.

(b) If Lessor does not terminate this Lease as provided in the paragraph above, Lessor shall promptly rebuild, repair and restore the Premises and the building to their former condition provided, however, that if Lessor has not completed such restoration within forty-five (45) days after the date of the damage or destruction, Lessee may, at its option, terminate this Lease upon written notice to Lessor.

(c) If the Premises shall be damaged in whole or in part during the last three (3) months of the Term so that Lessee is unable to occupy the Premises for its permitted use, then either Lessor or Lessee may, at its option, terminate this Lease upon written notice to the other within ten (10) days of the date of the damage or destruction.

(d) If the damage or destruction renders all or part of the Premises untenable, Rent shall proportionately abate commencing on the date of the damage or destruction and ending on the date the Premises is delivered to Lessee with Lessor’s restoration obligation substantially complete. The extent of the abatement shall be based upon the portion of the Premises rendered untenable, inaccessible or unfit for the Permitted Use.

(e) Notwithstanding anything to the contrary in this Lease, Lessor and Lessee mutually waive their respective rights of recovery against each other and each other’s officers, directors, constituent partners, agents and employees to the extent any loss is or would be covered by fire, extended coverage or other property insurance policies required to be carried under this Lease or otherwise carried by the waiving party, and the right of the insurance carriers of such policy or policies are to be surrogated to the right of the insured under the applicable policy. Each party shall cause its insurance policy to be endorsed to evidence compliance with such waiver.
16. HOLDOVER

(a) In the event of the inability of Lessor to deliver possession of the Leased Premises at the time of the commencement of the Term of this Lease by reason of either holding over or retention of possession of the Lessee or occupant, or for any reason, neither the Lessor nor its agents shall be liable for any damage caused thereby, nor shall this Lease become void or the Term herein specified be in any way extended, but in such event the Lessee shall not be liable for any rent until the possession of the Premises is given to the Lessee. If the Lessee is not given possession of the premises within sixty (60) days after the date herein above specified as the commencement date of the term of this Lease, the Lessee shall have the right to rescind this Lease by giving written notice of such rescission to the Lessor. In such event, this Lease shall be deemed rescinded and void.

(b) If Lessee should hold over after the Lease expiration date, Lessee shall pay two hundred percent (200%) of the rent, including payments of taxes and all items of additional rent, payable during the final full month of the Term, exclusive of abatements, if any. Lessee’s occupancy shall otherwise be on the terms and conditions herein specified so far, as applicable, but expressly excluding all renewal and extension rights. No holding over by Lessee after the Term shall operate to extend the Term. Any holding over with Lessor’s written consent shall be construed as tenancy at sufferance or from month to month at Lessor’s option. Any holding over without Lessor’s written consent shall entitle Lessor to reenter the Premises as provided in Section 18 and to enforce all other rights and remedies provided by law or this Lease.

17. COSTS OF COLLECTION

Lessee promises to pay all costs of collection and its reasonable attorneys’ fees in the event it becomes necessary for Lessor to employ an attorney to collect rent due hereunder by suit or otherwise or to enforce any of the covenants, obligations and conditions imposed by this Lease. The obligation of Lessee to pay such costs of collection including reasonable attorneys’ fees shall apply whether or not suit be brought, and if suit be brought, then upon trial and appellate levels.

18. RIGHT OF ENTRY

Provided that the exercise of such rights does not unreasonably interfere with Lessee’s use or occupancy of the Premises, Lessor shall have the right to enter the Premises at reasonable times during normal business hours and upon reasonable advance notice to Lessee (except in the case of an emergency) for the purpose of making alterations, repairs or improvements to the Premises, to show the Premises to prospective Lessees and for other reasonably related and lawful purposes.
19. DEFAULT

Each of the following events shall be an “Event of Default” hereunder:

(a) Lessee’s failure to pay when due any installment of Rent.

(b) Lessee’s failure to perform or observe any other covenant, condition or other obligation of Lessee and such failure continues for a period of ten (10) days after Lessor gives Lessee written notice thereof.

(c) The Premises become vacant and abandoned other than in connection with a casualty or condemnation.

(d) At Lessor’s option, the occurrence of any of the following:

   (i) The appointment of a receiver to take possession of all or substantially all of the assets of Lessee or the Premises;

   (ii) An assignment by Lessee for the benefit of creditors;

   (iii) The filing of any voluntary petition in bankruptcy by Lessee or the filing of any involuntary petition by Lessee’s creditors;

   (iv) The attachment, execution or other judicial seizure of all or substantially all of Lessee’s assets or the Premises;

   (v) The admission of Lessee, in writing, of its inability to pay its debts as they become due;

   (vi) The filing by Lessee of any answer admitting or failing timely to contest a material allegation of a petition filing against Lessee in any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation or dissolution of Lessee or similar relief; or

   (vii) The occurrence of any of the foregoing with respect to any guarantor of Lessee’s obligations under this Lease.

20. DEFAULT REMEDIES

If an Event of Default occurs by Lessee that is not cured by Lessee, Lessor shall have all of the following rights and remedies in addition to all other rights and remedies available to Lessor at law or in equity:

(a) Lessor may:
(i) terminate this Lease without further notice, whereupon Lessor shall enter and take possession of the Premises for the account of Lessor, in accordance with any Laws governing such repossession, and remove Lessee;

(ii) without terminating the Lease, enter and take possession of the Premises for the account of Lessee, in accordance with any Laws governing such repossession, and remove Lessee.

If necessary, Lessor may proceed to recover possession of the Premises under applicable Laws, or by such other legal proceedings, including summary disposess proceedings. Lessor’s exercise of any of its remedies or its receipt of Lessee’s keys shall not be considered an acceptance or surrender of the Premises by Lessee. A surrender must be agreed to in writing and signed by both parties. If Lessor terminates this Lease or terminates Lessee’s right to possess the Premises because of an Event of Default, then everything in this Lease to be done by Lessor shall cease, without prejudice; however, to Lessee’s liability for all Rent and other sums due hereunder. Lessee waives all right to receive a notice of eviction required by Florida Statute SS 83.20.

(b) Lessor may hold Lessee liable for:

(i) rent and other indebtedness that otherwise would have been payable by Lessee to Lessor for the balance of the Term, less any amount that Lessor receives from re-letting the Premises after all of Lessor’s costs and expenses incurred in such re-letting have been subtracted;

(ii) any amounts Lessor incurs in re-letting the Premises during the remainder of the Term; and

(iii) other necessary and reasonable expenses including, without limitation, reasonable attorneys’ fees incurred by Lessor in enforcing its remedies.

Additionally, at the option of Lessor, Lessor shall be entitled to accelerate and declare the entire remaining unpaid Rent for the balance of the Term to be immediately due and payable.

(c) Lessor shall have no obligation to re-let the Premises. However, Lessor may re-let the Premises or any part thereof, alone or together with other premises, for such term(s) which may extend beyond the date on which the Lease Term would have expired but for Lessee’s default and on such terms and conditions which may include concessions or free rent and alterations of the Premises as Lessor, in its sole discretion, may determine. Lessor shall not be liable for, nor shall Lessee’s obligations be diminished by reason of, Lessor’s failure to re-let the Premises or collect any rent due upon such re-letting. If Lessor re-lets the
Premises and collects rent in excess of the Rent and other Rent items owed by Lessee hereunder, Lessor shall be entitled to retain any such excess and Lessee shall not be entitled to a credit therefor.

(d) Lessor’s rights and remedies set forth in this Lease are cumulative and in addition to Lessor’s other rights and remedies at law or in equity, including those available because of any anticipatory breach of this Lease. Lessor’s exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Lessor’s delay or failure to exercise or enforce any of Lessor’s right or remedies or Lessee’s obligations shall not constitute a waiver of any such rights, remedies or obligations. Lessor shall not be deemed to have waived any default unless such waiver expressly is set forth in an instrument signed by Lessor. Any such waiver shall not be construed as a waiver of any covenant or condition except as to the specific circumstances described in such waiver. Neither Lessee’s payment of an amount less than a sum due nor Lessee’s endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction. Notwithstanding any request or designation by Lessee, Lessor may apply any payment received from Lessee to any payment then due. Lessor may accept the same without prejudice to Lessor’s right to recover the balance of such sum or to pursue other remedies. Re-entry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

21. ASSIGNMENTS AND SUBLETTING

Lessee covenants and agrees not to assign, mortgage, encumber or sublet said Leased Premises or any part of same or in any other manner transfer the Lease Agreement, Leasehold or Lease Premises. This prohibition shall also apply to a transfer of the controlling interest of the stock in the Lessee, if Lessee is a corporation, and to transfer of a controlling interest in a partnership, if Lessee is a general or limited partnership.

22. ATTORNMENT

(a) Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit of Lessor and Lessee and their respective subsidiaries, affiliates, heirs, legal representatives, successors and assigns.

(b) In the event the Lessor should sell the Property, including the Premises, the sale shall include full assignment of the terms and conditions of this Lease and Lessee’s right to possession of the Premises shall not be disturbed.

23. APPROVAL

In all cases where consent or approval shall be required of either Lessor or Lessee pursuant to the Lease, the giving of such consent shall not be unreasonably withheld, delayed or conditioned by the party from whom such consent is required.
24. BANKRUPTCY AND INSOLVENCY

(a) If at any time during the term hereof a receiver of the business or assets of the Lessee be appointed, or if the Lessee makes an assignment for the benefit of creditors, or if any Sheriff or his agent take possession of the Leased Premises or assets located thereon by virtue of any attachment or execution proceedings, then the Lessor may, at its option, and without notice to the Lessee, take possession of the Leased Premises and terminate this Lease. Upon such termination, all rent shall at once become due and payable, and in addition thereto, the Lessor shall have all rights provided by law. If at any time during the term hereof proceedings in bankruptcy shall be instituted by or against the Lessee, and the trustee in bankruptcy elects to assume the unexpired term of this Lease, then such trustee shall promptly cure any existing default existing under a term or provision of the Lease and shall provide to Lessor adequate assurance of future performance as required under Section 365(b) of the Bankruptcy Code or any amendments thereto. Such adequate assurance shall include, but not be limited to:

(i) adequate assurance of the source of rent.

(ii) adequate assurance that assumption or assignment of this Lease or subletting of the Leased Premises is not contrary to the general uses of other Lessees in the building in which the Leased Premises are located.

(iii) adequate assurance that assignment of this Lease or subletting the Leased Premises shall not constitute a default under any mortgage encumbering the building in which the Leased Premises are a part and adequate assurance that such trustee assignment of this Lease or subletting the Leased Premises shall not be to any party whose credit worthiness or reputation is subject to reasonable question by Lessor.

(b) The parties hereto acknowledge that the foregoing provisions are the minimal requirements necessary to protect Lessor from an increased risk of future default under this Lease. Notwithstanding any other provision in this Lease, in the event that the Lessee files for bankruptcy or is adjudged a bankrupt, the security deposit referred to herein shall be considered advance rent and shall be applied to the rental due hereunder.

25. SUBORDINATION, ESTOPPEL, RIGHT TO TRANSFER

Lessee accepts this Lease subject and subordinate to any mortgage now or at any time hereafter constituting a lien or charge upon the Leased Premises or the building in which the Leased Premises are a part. Lessee shall, on demand, execute any instrument, which may be required by any Mortgagee for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage or deed of trust. Upon three (3)
days prior written notice from Lessor, Lessee shall execute and deliver to Lessor a statement in writing (1) certifying that this Lease is unmodified and in full force and effect and the dates to which the rent and other charges are paid in advance, if any, and (2) acknowledging that to Lessee’s knowledge there are not any uncured defaults on the part of Lessor hereunder and that Lessee has no right of offset, counterclaim or deduction in rent or specifying such defaults, if any, of claim, together with the amount of any offer, counterclaim or deduction alleged by Lessee. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Leased Premises are a part. Lessee’s failure to deliver said statement within such time shall constitute agreement by Lessee (1) that this Lease is in full force and effect without modification except as may be represented by Lessor, (2) that there are no uncured defaults in Lessor’s performance and that Lessee has no right of offset, counterclaim or deduction against rent and (3) that no more than one month’s rent has been paid in advance.

Lessor shall have the right to transfer and assign in whole or in part all and every feature of its rights and obligations hereunder in the Leased Premises. Such transfers and assignments are to be in all things respected and recognized by Lessee, and upon assumption of Lessor’s obligations hereunder by said transferee or assignee, Lessor shall be relieved of all further liabilities and obligations hereunder.

26. LIABILITY

(a) As a material part of the consideration to be rendered to Lessor under this Lease, Lessor shall not be liable for damage to property of Lessee or of others located on the Leased Premises, nor for the loss of or damage to any property of Lessee or of others by theft, casualty loss or otherwise, nor shall Lessor be liable to Lessee for losses arising from the inability of Lessee to operate its business for any reason whatsoever, and Lessee hereby waives all such claims against Lessor and will hold Lessor exempt and harmless for or on account of such damage or injury. Lessor shall not be liable for any injury or damage to persons or property resulting from, but not limited to, fire explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Leased Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any place or by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any such damage caused by other Lessees or persons in the Leased Premises, occupants of adjacent property or the public, or caused by operations in construction of any private, public quasi-public work.

(b) All property of the Lessee kept or stored on the Leased Premises shall be so kept or stored at the risk of the Lessee and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee’s insurance carriers.
27. INDEMNIFICATION

(a) Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, losses, costs, liabilities, damages and expenses including, without limitation, penalties, fines and reasonable attorneys’ fees to the extent incurred in connection with or arising from:

(i) the use or occupancy or manner of use or occupancy of the Premises or any injury or damage caused by Lessee, Lessee Parties or any person occupying the Premises through Lessee;

(ii) the introduction or presence of Hazardous Substances or other environmental conditions in, on, under or about the Premises as a result of the actions of Lessee or its agents, employees, representatives or contractors; or

(iii) a default by Lessee under this Lease.

(b) Lessor shall indemnify, defend and hold Lessee harmless from and against any and all claims, losses, costs, liabilities, damages and expenses including, without limitation, penalties, fines and reasonable attorneys’ fees to the extent incurred in connection with or arising from:

(i) any injury or damage caused by any negligent or willful acts of Lessor; or

(ii) a default by Lessor under this Lease.

(c) The terms of this Section 27 shall survive the expiration or sooner termination of this Lease.

28. CONDITION OF PREMISES: REPAIR

Subject to the duties of the Lessor as otherwise provided herein, the Lessee will keep the Leased Premises in such repair as the same are at the commencement of the said term or may be put in by the Lessor during the continuance thereof, damage due to reasonable wear and tear and damage by fire or other casualty excepted.

29. CONDEMNATION

(a) If all of the Premises are condemned or taken in any permanent manner before or during the Term for any public or quasi-public use, or any permanent transfer of the Premises is made in avoidance of an exercise of the power of eminent domain (each of which events shall be referred to as a “taking”), this Lease shall automatically terminate as of the date of the vesting of title due to such tak-
ing. If a part of the Premises is so taken, this Lease shall automatically terminate as to the portion of the Premises so taken as of the date of the vesting of title as a result of such taking. If such portion of the Premises is taken as to render the balance of the Premises unusable by Lessee for the permitted use, as reasonably determined by either Lessor by written notice to Lessee given within fifteen (15) days following notice to Lessor of the date on which said vesting will occur. If this Lease is not terminated as a result of any taking, Lessor shall restore the Kress Building to an architecturally whole unit provided, however, that Lessor shall not be obligated to expend on such restoration more than the amount of condemnation proceeds actually received by Lessor.

(b) Lessor shall be entitled to the entire award for any taking, including, without limitation, any award made for the value of the leasehold estate created by this Lease. No award for any partial or entire taking shall be apportioned, and Lessee thereby assigns to Lessor any award that may be made in any taking, together with any and all rights of Lessee now or hereafter arising in or to such award or any part thereof; provided, however, that nothing contained herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any separate award made to Lessee for its relocation expenses, the taking of personal property and fixtures belonging to Lessee, the unamortized value of improvements made or paid for by Lessee or the interruption of or damage to Lessee’s business.

(c) In the event or a partial taking that does not result in a termination of this Lease as to the entire Premises, Rent shall be equitably adjusted in relation to the portions of the Premises and building taken or rendered unusable by such taking.

(d) If all or any portion of the Premises is taken for a limited period of time before or after Term, this Lease shall remain in full force and effect; provided, however, that Rent shall abate during such limited period in proportion to the portion of the Premises taken by such taking. Lessor shall be entitled to receive the entire award made in connection with any such temporary taking provided, however, that nothing contained herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any separate award made to Lessee for its relocation expenses, the taking of personal property and fixtures belonging to Lessee, the unamortized value of improvements made or paid for by Lessee or the interruption of or damage to Lessee’s business.

30. RULES AND REGULATIONS

Lessor shall have the right from time to time to prescribe reasonable rules and regulations for Lessee’s use of the Premises and common areas upon written advance notice to Lessee. Lessee shall observe and comply with such rules, if any, provided that such rules and regulations are consistent with the terms and provisions of this Lease.
31. IDENTIFICATION FOR TAX PURPOSES

Lessee shall provide Lessor with its identifying number for recording and reporting of income and/or expenses as may be required by the Federal government.

32. AUTHORITY OF LESSEE

If Lessee is other than a sole proprietorship prior to occupancy of the Leased Premises, Lessee shall provide Lessor with such documentation as is necessary to legally identify Lessee and provide evidence of the authority of the party executing this Lease to bind the Lessee. If Lessee is a corporation, it shall supply Lessor with a copy of its Articles of Incorporation and a Certificate of Incumbency setting forth the names of all directors and officers of the corporation. If Lessee is a limited partnership, it shall supply Lessor with a copy of its Certificate of Limited Partnership. If Lessee is a general partnership, it shall supply Lessor with a copy of its Certificate of General Partnership which shall set both the name and residence address of each partner.

33. WAIVER AND COVENANTS

It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant. The covenants in this Lease shall be construed as mutually independent covenants.

34. TITLES, PRONOUNS

The titles and headings of this Lease are for convenience and reference only and shall not in any way be deemed a part of this Lease for the purpose of construing or interpreting the meanings thereof or for any other purpose.

35. FORCE MAJEURE

If Lessor or Lessee is delayed or prevented from performing any of their obligations under this Lease when and to the extent such failure or delay is caused by or results from acts beyond either party’s control without limitation, the following Force Majeure events:

(a) Act of God

(b) Flood, fire, weather, earthquake or explosion

(c) War, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest

(d) Government order or law
(e) Actions, embargoes or blockades in effect on or after the date of this Lease

(f) Action by any governmental authority

(g) National or regional emergency

(h) Strikes, labor stoppages or slowdowns or other industrial disturbances

(i) Pandemic

(j) Shortage of adequate power or transportation facilities

the period of such day or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by Lessor or Lessee, except for the payment of Rent and all other monetary obligations payable by Lessee in accordance herewith which risk Lessee hereby assumes. Lessee hereby acknowledges, consents and agrees that any and/or all services, facilities and access by the public to the Premises may be suspended in whole or in part during such temporary times as may be declared by local, state or federal authorities and/or during any periods of actual or threatened civil commotion, insurrection or other circumstances beyond Lessor’s control.

36. GOVERNING LAW

The Laws of the State of Florida shall govern the validity, performance, interpretation and enforcement of this Lease. Lessee connects to personal jurisdiction and venue in the state and judicial district in which the Premises is located. The courts of the state where the Kress Building is located will have exclusive jurisdiction and Lessee hereby agrees to such exclusive jurisdiction.

37. MISCELLANEOUS PROVISIONS

(a) Lessee shall each indemnify, defend and hold harmless the Lessor from and against any claim or claims for any broker’s fee or commission asserted by any broker, agent or finder employed by Lessee. The provisions of this Section 37 shall survive the expiration or other termination of this Lease.

(b) The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and, except as otherwise expressly provided herein, their respective personal representatives, successors and assigns provided, however, that upon the sale, assignment or transfer by Lessor (or any subsequent Lessor) of its interest in the Building or the Premises as owner or Lessee including, without limitation, any transfer upon or in lieu of foreclosure or by operation of law, Lessor (or subsequent Lessor) shall be relieved from all sub-
sequent obligations or liabilities under this Lease and all obligations subsequent to such sale, assignment or transfer, but not any obligations or liabilities that have accrued prior to the date of such sale, assignment or transfer, shall be binding upon the grantee, assignee or other transferee of such interest. Any such grantee, assignee or transferee by accepting such interest shall be deemed to have assumed such subsequent obligations and liabilities.

(c) If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby and each provision of this Lease shall remain in effect and shall be enforceable to the full extent permitted by law.

(d) The terms of this Lease are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Lease and may not be contradicted by evidence of any prior or contemporaneous agreement, arrangement, understanding or negotiation, whether oral or written. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Lease. Neither Lessor nor Lessor’s agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning and not construed for or against any party by reason of such party having drafted such language.

(e) All of Lessor’s and Lessee’s covenants and obligations contained in this Lease which, by their nature, might not be fully performed or capable of performance before the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. No provision of this Lease providing for termination in certain events shall be construed as a limitation or restriction of Lessor’s or Lessee’s rights and remedies at law or in equity available upon a breach by the other party of this Lease.

(f) This Lease may only be amended, modified or supplemented by an agreement in writing duly executed by both Lessor and Lessee.

(g) LESSOR AND LESSEE KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER IN ANY MATTER ARISING OUT OF THIS LEASE, THE RELATIONSHIP OF LESSOR AND LESSEE, LESSEE’S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF INJURY OR DAMAGE.
(h) DELIVERY OF THE LEASE TO EITHER PARTY SHALL NOT BIND ANY PARTY IN ANY MANNER AND NO LEASE OR OBLIGATIONS OF LESSOR OR LESSEE SHALL ARISE UNTIL THIS INSTRUMENT IS SIGNED BY BOTH LESSOR AND LESSEE AND DELIVERY IS MADE TO EACH PARTY.

(i) RADON GAS: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(j) In connection with any litigation arising out of the enforcement or interpretation of this Lease, the pressing party shall be entitled to recover from the other all costs incurred, including reasonable attorneys’ fees, including without limitation trial, appellate proceedings and bankruptcy.

(k) Time is of the essence of this Lease.

38. SPECIAL CONDITION

Notwithstanding anything to the contrary, in the event the Volusia County Charter is amended to eliminate or terminate as a legal entity the Volusia Growth Management Commission, then this Lease shall immediately as of the date of such amendment, all of tenants obligations herein shall cease and tenant shall vacate the leased premises.

39. NOTICES

For purposes of this Lease, all notices required to be given in writing shall be deemed delivered to Lessee if directed through the US Mail via certified or register mail or overnight delivery service with verification for delivery as follows:

**Lessor:**
Mac II of Volusia LLC  
140 S. Beach St. #310  
Daytona Beach, FL 32114

**Telephone:** 386-290-0411

**Email:** Leasing@KressDaytona.com

**Taxpayer ID Number:** 26-1611808
Lessee: Volusia Growth Management Commission

Telephone: 386-947-1875

Email: vgmc@volusia.org

40. ENTIRE AGREEMENT AND AMENDMENT

It is expressly understood by the parties that this Lease and any riders attached thereto set forth all the promises, agreements, representations, covenants and understandings between Lessor, or its agent, and Lessee relative to the Leased Premises, and that there are no other promises, agreements, representations, covenants, or understandings between them other than herein set forth. It is further understood and agreed that except as otherwise provided herein, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them and by direct reference therein made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LESSOR:

MAC II OF VOLUSIA LLC

______________________________
Fred E. Cleveland

LESSEE:

VOLUSIA GROWTH MANAGEMENT COMMISSION

______________________________
By: ___________________________