



# City of Ormond Beach AGENDA ITEM

October 17, 2023 - City Commission

**Number: 7.X**

<b>Section:</b>	CONSENT AGENDA		
<b>Item Category:</b>	Consent - Disposition Item	<b>Res./Ord. No:</b>	
<b>Strategic Goal:</b>	Economic Development - Other		
<b>Department:</b>	Economic Development		
<b>Subject:</b>	Renewal of the Ormond Beach State Legislative Services		
<b>Summary:</b>	<p>Legislative services are provided to the City Commission by Metz, Husband &amp; Daughton, PA (MHD). They have worked with and advocated for the City on various legislative and governmental affairs issues, including but not limited to:</p> <ol style="list-style-type: none"> <li>1. Worked with City staff, the Governor's Office along with Representative Tom Leek, Senator Travis Hutson and other members of the Volusia Delegation to work on the City's Legislative Priorities for the Fiscal Year (FY) 2023. The City received approximately \$9 million dollars in legislative appropriations for water quality projects and community &amp; economic development projects.</li> <li>2. Worked with the City Manager and staff to review and develop legislative priorities.</li> <li>3. Worked closely with the Florida League of Cities on legislative issues.</li> <li>4. Lobbied legislators in support of local government issues and in opposition to anti-local government issues.</li> <li>5. Provided frequent and customized reports (weekly during Committee Weeks and Session).</li> <li>6. Provided reports as needed via telephone and email on time-sensitive matters.</li> <li>7. Promptly responded to City questions and requests.</li> </ol>		
<b>Financial Impact:</b>	The fee for services for FY 2023-2024 is \$35,000, with funding available in the General Fund.		
<b>Citizen Impact:</b>	Continuing this contract provides the City with professional lobbying		

	expertise to assist in acquiring funding for various projects that meet the goals and objectives of Ormond Beach citizens.						
<b>Recommended Action (Staff, Advisory Board and/or Other):</b>	This item serves as public notification of the intent to renew the contract, unless otherwise directed.						
<b>Staff Contact:</b>	Brian Rademacher, Economic Development Director, (386) 676-3266						
<b>Attachments:</b>	1. RES NO 2021-183 Contract						
<b>Approval:</b>	<table> <tr> <td>Kelly McGuire, Finance Director</td> <td>8/3/2023</td> </tr> <tr> <td>Claire Whitley, Assistant City Manager</td> <td>9/22/2023</td> </tr> <tr> <td>Joyce Shanahan, City Manager</td> <td>9/28/2023</td> </tr> </table>	Kelly McGuire, Finance Director	8/3/2023	Claire Whitley, Assistant City Manager	9/22/2023	Joyce Shanahan, City Manager	9/28/2023
Kelly McGuire, Finance Director	8/3/2023						
Claire Whitley, Assistant City Manager	9/22/2023						
Joyce Shanahan, City Manager	9/28/2023						

## AGREEMENT

**THIS AGREEMENT** is made and entered into by and between the **City of Ormond Beach** (“City”), a Florida municipal corporation, 22 South Beach Street, Ormond Beach, Volusia County, Florida and **Metz, Husband & Daughton, P.A.** (“Contractor”), a Florida corporation, 119 South Monroe Street, Suite 200, Tallahassee, Florida and in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following:

1. **Scope of Work.** The Request for Proposals (“State of Florida Legislative Lobbying Service”, RFP No. 2021-20) dated September 1, 2021, attached hereto as Exhibit “A” and the Proposal dated September 21, 2021, attached hereto as Exhibit “B”, are incorporated herein by reference and are a material part of this Agreement. The Contractor shall fully comply with the terms and conditions described in the attached exhibits.
2. **Term.** This Agreement shall be effective on the date it is fully executed by the parties. The initial term of this Agreement will be for one (1) year and may be renewed for three (3) additional one-year terms upon mutual agreement of the parties thereto.
3. **Consideration.** Contractor shall perform the services at the prices set forth in the attached exhibits. The City shall pay to Metz, Husband & Daughton P.A., \$35,000 annually, in quarterly installments of \$8,750. Contractor shall prepare and submit invoices to the City at the address set forth in Paragraph 9 of this Agreement. All such invoices shall be paid by the City within thirty (30) days.
4. **Delivery.** Contractor shall complete the project within the time frame set forth in the attached exhibits.
5. **Termination of Agreement.**
  - (a) The City Commission shall have the right to terminate the Agreement in the event the Contractor files any petition or proceeding for bankruptcy relief, or is adjudicated to be bankrupt or insolvent, or fails to pay just debts as they ordinarily become due; or for a material breach of this agreement that remains uncured for at least thirty days after prior written receipt of a notice of violation of same.
  - (b) Contractor may terminate this agreement for a material breach of this agreement that remains uncured for at least thirty days after prior written receipt of a notice of violation of same.
6. **Assignment.** The Contractor shall not assign, convey or transfer all or any part of this Agreement, or all or any part of Contractor’s interest herein, or all or any part of any interest in the Contractor, without the prior written consent of the City Commission, which consent shall not be unreasonably withheld.

7. **Complete Agreement.** This Agreement, including the provisions set forth in the exhibits attached hereto and incorporated by reference herein, constitutes the entire and complete agreement of the parties, and the promises and covenants herein contained shall survive the life of this Agreement.
8. **Amendment to Agreement.** Any amendment, change, or modification of this Agreement must be in writing and fully executed by both parties.
9. **Notices.** All notices which are required by this Agreement shall be provided to the parties at the following addresses, or such other addresses as may be requested in writing by either party:

**City of Ormond Beach**  
Joyce Shanahan, City Manager  
(copy to City Attorney)  
22 South Beach Street  
Ormond Beach, FL 32174

**Contractor**  
Douglas S. Bell  
Metz, Husband & Daughton, P.A.  
Post Office Box 10909  
Tallahassee, Florida 32302

10. **Sovereign Immunity.** The City expressly retains and reserves all rights, privileges, immunities, and benefits of sovereign immunity. This provision shall be construed broadly in favor of the City.
11. **Venue.** The terms and conditions of this Agreement shall be construed and enforced under the laws of the State of Florida. Any action or proceeding, either at law or in equity, regarding this Agreement shall be brought in the circuit court, Seventh Judicial Circuit in and for Volusia County, Florida. Venue in any other jurisdiction or forum, whether it be any other circuit, state or federal venue, is hereby expressly waived.
12. **Waiver of Conditions.** No waiver by the City of any condition or breach of performance by the Contractor shall constitute an irrevocable, continuing, or subsequent waiver by the City of the same condition or breach of performance, or of any other condition or other breach of performance.
13. **Severability.** If any part of this Agreement is declared to be unenforceable or void by a court of competent jurisdiction, the remaining parts of the Agreement shall remain in full force and effect as long as the services to be provided by the Contractor are not materially affected, altered or impaired as a result of said judicial declaration.
14. **Conflicting Provisions.** In the event of any conflict between the provisions of this Agreement and any exhibits, the provision most favorable to the City shall control and shall be given full force and effect.
15. **Indemnification.** The City, its agents, employees, and officials, both elected and appointed, shall be indemnified and held harmless by Contractor from any and all liabilities, claims, and causes of action which may arise out of the willful, negligent, or unlawful acts or omissions of the Contractor or its subcontractors in the performance of

this Agreement, unless such claims are a result of the City's sole negligence, as determined by the final decision maker of such claim.

16. **Duty to Defend.** The Contractor shall defend all suits and administrative actions, including all appellate proceedings, brought against the City, its agents, employees, and officials, both elected and appointed and shall pay all attorneys' fees and costs associated with the City's legal defense, as may be selected by the City, arising from all claims and causes of action described in Section 15 above. Such payment on behalf of the City shall be in addition to any and all other legal or equitable remedies available to the City and shall not be considered to be the City's exclusive remedy.
17. **Contractor's Insurance.** The Contractor shall purchase and maintain for the entire life of this Agreement, including any and all approved time extensions, until its final acceptance by the City, such insurance as will protect the Contractor from claims under Workers' Compensation, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees; from claims insured by usual or unusual injury liability coverage; from claims or injury to or destruction of tangible property and from claims insured by usual Commercial General Liability coverage. This includes loss of use resulting therefrom, any or all of which may arise out of the Contractor's operations under this Agreement, whether such operations be by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. The Contractor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City, and may be reduced or eliminated at the sole discretion of the City. The Contractor is responsible for the amount of any deductible or self-insured retention.
18. **Types of Insurance and Limits of Liability**

The insurance required herein shall be written for not less than any limits of liability specified and incorporated as part of the Contract Documents or as required by law, whichever is greater, and shall include and not limited to the following:

- (a) Workers' Compensation Insurance in statutory limits for the State of Florida with Coverage B - Employer's Liability limits of not less than:

\$100,000 Each Accident Bodily Injury by Accident  
\$100,000 Each Employee Bodily Injury by Disease  
\$500,000 Policy Limit Bodily Injury by Disease

Certificate of Exemptions. If the contractor has a State-issued Certificate of Exemption, the contractor may provide a copy in place of the requirement for coverage. However, if the contractor subcontracts or retains any other person or entity to perform under the contract, that person or entity must provide proof of workers' compensation insurance as required by law or provide a Certificate of Exemption.

It is the intent of the City that any individual who either contracts directly with the city or performs any work on behalf of any such contractor be covered by workers' compensation insurance or have a valid exemption from said coverage.

(If applicable to the Project, the policy must include benefits under the United States Longshoremen's and Harbor Workers' Act and the Jones Act coverage--all maritime coverage.)

**(b)** Commercial General Liability Insurance shall be written on a coverage form as broad as Insurance Services Office (ISO) Form CG 00 01 11 85, or its successor form, including but not limited to the following coverage (any deviation shall be noted on the Certificates of Insurance):

- a. Premises, Operations, Products and Completed Operations
- b. Owners' & Contractors' Protective
- c. Products & Completed Operation
- d. Explosion, Collapse & Underground Conditions
- e. Blanket Contractual Liability
- f. Personal Injury Liability
- g. Broad Form Property Damage Endorsement, including Completed Operations
- h. Independent Contractors
- i. Watercraft--Owned and Non-Owned (if applicable, endorsement must be included in General Liability policy or a separate Protection & Indemnity Policy must be written)
- j. Pollution Liability (if applicable)
- k. Asbestos Abatement (if applicable)
- l. Fire Damage Liability

Certain coverage outlined above may not be required if they do not relate to the Project, as may be determined at the sole discretion of the City.

Commercial General Liability Coverage shall be written on an occurrence basis and the limits shall be no less and not limited to the following amounts:

Limits (not less than)

\$1 Million Each Occurrence

\$2 Million General Aggregate

\$1 Million Aggregate Products & Completed Operations

NOTE: Commercial General Liability Coverage must be purchased on either a project basis (separate policy per contract) or an endorsement allocating an aggregate limit per location or specified project.

- (c) Automobile Liability Insurance is required if an Automobile(s) is used in the performance of the contract.

ISO Symbol 1 (Any Auto), or alternatively a combination of Symbol 2 (Owned Autos), Symbol 8 (Hired Autos), and Symbol 9 (Non-Owned Autos), and limits shall be no less than:

\$1 Million                      Combined Single Limit for Bodily Injury  
and Property Damage

- (d) Excess Liability

For contracts \$250,000 or greater an Excess Liability Policy of at least but not limited to \$1,000,000 in addition to the scheduled underlying policies for Commercial General Liability, Automobile Liability and Employers' Liability, the Contractor shall also provide an Excess Liability Policy with a maximum self-insured retention not to exceed \$25,0000 per occurrence.

- (e) Builder's Risk

Contractor shall purchase Builder's Risk Insurance for any contracts that are deemed to be vertical construction on an All-Risk policy, and shall also include coverage for wind, hail, and named storm. Limits of coverage shall be at least and not limited to the value of the project.

- (f) Professional Liability, Malpractice and/or Errors and Omissions

The Contractor shall purchase and maintain professional liability, malpractice, or errors or omissions insurance with minimum limits of \$1,000,000 per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as is available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provides a retroactive date no later than the inception date of claims made coverage.

19. **Requirements for Certificates of Insurance.**

- (a) With the execution of this Agreement, the Contractor shall provide certificates of such insurance acceptable to the City. These certificates and insurance policies shall contain a provision that the coverage under the policies will not be canceled, non-renewed or materially changed until at least **thirty (30)** days' prior written notice of such cancellation, non-renewal or change [except for nonpayment of premium, which shall be **ten (10)** days] has been given to the City. The Contractor shall be required to replace any expired or canceled policies in like amount and coverage to the satisfaction of the City. The Certificate of Insurance shall be the ACORD

FORM 25-S (7/90), or its successor form, and shall be made a part of this Agreement.

- (b) New certificates of insurance shall be provided to the City at least fifteen (15) days prior to coverage renewals.
- (c) If requested by the City, the Contractor shall furnish complete copies of the Contractor's insurance policies, forms and endorsements.
- (d) For Commercial General Liability coverage the Contractor shall, at the option of the City, provide an indication of the amount of claims payments or reserves chargeable to the aggregate amount of liability coverage. If the Commercial General Liability form of coverage includes an annual aggregate limitation on the amount of insurance provided, a separate project aggregate limit may be required by the City for the given contract.
- (e) If the Contractor fails to obtain and maintain for the life of the Agreement the insurance required hereby or to replace any such expired or canceled policy, the City may obtain and maintain such insurance with such company as it deems satisfactory. Any amounts expended by the City in payment of premiums for such insurance shall be deducted by the City from the amount due the Contractor for the work covered by the Agreement.
- (f) **Policies of Insurance**
  1. Except as otherwise provided herein, all insurance policies shall be issued by insurers licensed to do business in the State of Florida on an admitted basis or which is an eligible surplus lines insurer in the State of Florida, and any such insuring company is required to have a minimum financial rating of (A-) in the latest edition of "Best's Key Rating Guide", published by A. M. Best Co., Inc., or some similarly nationally recognized rating authority, including Standard and Poors and Demotech.
  2. For Workers' Compensation coverage only, self-insurance programs are acceptable with a minimum A- rated reinsurance carriers; written confirmation is required.
  3. All policies of insurance or certificates thereof referred to herein shall be deposited with the City Clerk.
  4. The City shall be named an Additional Insured on General Liability and Automobile Liability policies of insurance and certificates thereof.

20. **Enforcement of Costs.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court



costs, and all expenses even if not taxable court costs (including, without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy, and post-judgment proceedings), incurred in that action or proceeding or any appeal, in addition to any other relief to which the party or parties may be entitled. Attorneys' fees include legal assistant fees, expert witness fees, investigative fees, administrative costs, and all other charges billed by the attorney for the prevailing party.

21. **Compliance With Laws.** Contractor shall comply with all applicable federal, state and local laws and regulations.
22. **Compliance With Florida Public Records Law.** Contractor expressly agrees that it shall comply with the public records law provided in Florida Statutes, Chapter 119, and specifically to:
  - (a) Keep and maintain public records required by the City to perform the contracted service.
  - (b) Upon request from the City Clerk, provide the City 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, Florida Statutes, or as otherwise provided by law.
  - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.
  - (d) Upon completion of the contract, transfer at no cost, to the City all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, 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 the completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.
  - (e) Failure of the Contractor to comply with Public Records Law as provided by Florida Statutes, Chapter 119, shall subject the Contractor to penalties under Chapter 119.10 and subject this Agreement to termination for cause by the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**

**22 SOUTH BEACH STREET**  
**ORMOND BEACH, FLORIDA 32175. (386)677-0311**  
**CITYCLERK@ORMONDBEACH.ORG**

Ref: Fla. Stat. §119.0701(2016)

23. **Limitation of Remedy and Liability.** Contractor and Owner expressly waive any claim for consequential damages against the other including but not limited to, a waiver of claims for diminished bonding capacity, loss of financing, loss of business reputation, lost profits on other projects or other lost opportunity damage claims.

Contractor expressly agrees that any claim (tort, contract, claim in equity, or otherwise) by Contractor for damages against Owner shall not exceed the total amount of the contract price, less any amounts actually paid to the Contractor by the Owner (or by an insurer of the Owner).

All liability of the City allegedly resulting from, arising out of or connected with this Agreement or from the performance or breach thereof, shall terminate three years from the termination of this Agreement.

24. **Waiver of Right to Jury Trial.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT WHICH ANY PARTY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY PROCEEDING, LITIGATION OR COUNTERCLAIM BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. IF THE SUBJECT MATTER OF ANY LAWSUIT IS ONE IN WHICH THE WAIVER OF JURY TRIAL IS PROHIBITED, NO PARTY TO THIS AGREEMENT SHALL PRESENT AS A NON-COMPULSORY COUNTERCLAIM IN ANY SUCH LAWSUIT ANY CLAIM BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. FURTHERMORE, NO PARTY TO THIS AGREEMENT SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL CANNOT BE WAIVED.

25. **Verification of Employment Status Using E-Verify System**

- (a) Section 448.09, *Florida Statutes*, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, either for herself or himself, or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work in the United States. Contractor warrants that it is registered with the U.S. Department of Homeland Security's E-Verify system, and is compliant with the requirements of Sections 448.09 and 448.095, *Florida Statutes*.
- (b) Contractor agrees that if the contractor enters into an agreement with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the

subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and contractor warrants it shall maintain any such affidavits for the duration of the contract. If the City has a good faith belief that a subcontractor knowingly violated Section 448.09 (1), the City shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

- (c) In the event the City has a good faith belief that the contractor has knowingly violated Section 448.09 (1), *Florida Statutes*, the City shall terminate the contract, and as provided by statute, the contractor may not be awarded a public contract for at least one (1) year after the date of termination. The contractor may also be held liable for any additional costs incurred by the City as a result of the termination of the contract.

26. **No Conflict of Interest.** The Contractor warrants and agrees that neither it, nor any of its employees, agents, officers, directors, shareholders and independent contractors are, or will become, under contract with or accept compensation from any individual, business, corporation or governmental entity that has the possibility of an adverse interest to those of the City of Ormond Beach. The Contractor and its officers, directors, shareholders, employers, agents and subcontractors, agree not to provide any services or assistance to any entity directly or indirectly relating to the services provided to the City and to immediately notify the City Manager and City Attorney of any contact with any entity that has, or potentially has, a conflict of interest with the City of Ormond Beach. This provision shall be interpreted as broadly as possible to prevent any potential or actual conflict of interest presently or in the future by the Contractor.

27. **Effective Date.** This Agreement shall become effective upon the date last signed by the parties hereto.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed on the dates indicated hereinbelow.

DATED this 16 day of November, 2021.

Witnesses:

Wendy Hontz

Print Name: Wendy Hontz

Taylor

Print Name: Taylor Lockert

**CITY OF ORMOND BEACH**

By: Bill Partington  
**BILL PARTINGTON**  
Mayor

By: Joyce Shananah  
**JOYCE SHANAHAN**  
City Manager



DATED this 10<sup>th</sup> day of November, 2021.

Witnesses:

METZ, HUSBAND & DAUGHTON, P.A.

Darla Gale Mawsters  
Print Name: Darla Gale Mawsters

By: [Signature]  
Print Name: Douglas S. Bell  
Title: Attorney

Abigail Rutledge  
Print Name: Abigail Rutledge

Attest: [Signature]  
Print Name: JAMES R. DAUGHTON, Jr.  
Title: Shareholder