
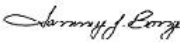
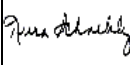
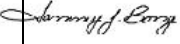


November 10, 2011		<b>AGENDA ITEM</b>		Item 30
<input type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input checked="" type="checkbox"/> Budget Resolution
				<input checked="" type="checkbox"/> Other
<b>Department:</b> Public Works		<b>File Number:</b> VC-1317842145831-A		
<b>Division:</b> Administrative Services				
<b>Subject:</b> Contract for tourism and marketing study with Strategic Advisory Group LLC, Atlanta, Georgia.				
<b>Account Number(s):</b> Contracted services for \$89,000; additional services at a blended rate of \$195 per hour 118-130-1400-3400 for \$89,000.00				
<b>Total Item Budget:</b> \$89,000.00				
<b>Staff Contact(s):</b> George Recktenwald Phone: 736-5968 ext. 12207 Jeaniene Jennings Phone: 822-5789 ext. 15789				
<b>Summary/Highlights:</b> Staff recommends approval of the attached contract for a tourism and marketing study negotiated with Strategic Advisory Group LLC, Atlanta, Georgia, after its selection by the county council on September 8, 2011. The contract price for the initial scope of work is \$89,000. In addition to the scope of work included in the contract, there is a blended rate of \$195.00 included for scope and services identified after award of initial contract. A budget resolution is attached to appropriate fund balance forward to offset this expense				
<b>Recommended Motion:</b> Approval.				
George Recktenwald Director Public Works   Jeaniene Jennings Director Purchasing  No Signature Present	OMB     Approved as to Budget Requirements	Legal     Approved as to Form and Legality	Tammy Bong County Manager's Office    Approved Agenda Item For: <b>November 10, 2011</b>	
<b>Council Action:</b>		<b>Modification:</b>		
<input type="checkbox"/> Approved as Recommended <input type="checkbox"/> Approved With Modifications <input type="checkbox"/> Disapproved <input type="checkbox"/> Continued Date:				



**CONTRACT BETWEEN THE COUNTY OF VOLUSIA, FLORIDA  
AND  
STRATEGIC ADVISORY GROUP LLC  
FOR  
TOURISM AND MARKETING STUDY, COUNTY OF VOLUSIA, FL**

Purchasing and Contracts  
County of Volusia  
123 West Indiana Avenue, Suite 302  
DeLand, Florida 32720  
386-736-5935

# Table of Contents

Article 1. - Definitions.....	1
Section 1.01.....	1
Section 1.02 Exhibits.....	4
Section 1.03 Order of Precedence.....	4
Article 2. - Term and Termination.....	4
Section 2.01 Term.....	4
Section 2.02 Termination.....	4
Article 3. - Scope of Services.....	6
Section 3.01 Overview.....	6
Section 3.02.....	7
Section 3.03 Change in Scope of Services.....	11
Section 3.04 Compensation.....	11
Section 3.05 Payment.....	12
Section 3.06 No Contingent Fees.....	12
Article 4. - Personnel of Consultant.....	12
Section 4.01 Supervision.....	12
Section 4.02 Applicable Laws.....	13
Section 4.03 Immigration Reform and Control Act of 1986.....	13
Section 4.04 Employment Discrimination.....	13
Section 4.05 Fair Labor Standards Act.....	13
Section 4.06 Americans with Disabilities Act.....	13
Section 4.07 Drug-Free and Smoke-Free Workplace.....	14
Article 5. - Consultant as Independent Contractor.....	14
Article 6. - Dispute Resolution.....	14
Section 6.01 Resolution.....	14
Section 6.02 Dispute.....	14
Section 6.03 Upon issuance of a Dispute Notice.....	15
Section 6.04 Formal Dispute Resolution.....	15
Article 7. - Deliverables and Standards.....	15
Section 7.01 Deliverables.....	15
Section 7.02 Failure to Deliver.....	15
Section 7.03 Standards.....	15
Article 8. - Indemnity, Insurance, Bonding.....	16
Section 8.01 General Insurance Requirements.....	16
Section 8.02 Proof of Insurance.....	17
Section 8.03 Required Types of Insurance.....	17
Section 8.04 Survivability.....	19
Article 9. - Indemnification of Liability and Indemnification.....	19
Section 9.01 Consultant Indemnification.....	19
Section 9.02 Claims Against County.....	20
Section 9.03 Consultant's indemnification obligations under this Section.....	20
Section 9.04 Sovereign Immunity.....	20
Section 9.05 Breach of Contract.....	20
Article 10. - County Government Policies.....	21
Section 10.01 Modifications Due To Public Welfare or Change in Law.....	21

Section 10.02 Compliance with Laws.....	21
Section 10.03 Truth-In-Negotiation Certificate.....	21
Section 10.04 Public Records Law.....	22
Section 10.05 Audit Right and Retention of Records.....	22
Article 11. - Miscellaneous Provisions.....	22
Section 11.01 Entire Contract.....	22
Section 11.02 No Third Party Beneficiaries. ....	22
Section 11.03 Notice.....	23
Section 11.04 Force Majeure. ....	23
Section 11.05 Governing Law. ....	23
Section 11.06 Venue and Jurisdiction. ....	23
Section 11.07 Waiver of Jury Trial. ....	23
Section 11.08 Attorneys Fees and Costs. ....	24
Section 11.09 Severability. ....	24
Section 11.10 Waiver.....	24
Section 11.11 Assignment and Performance.....	24
Section 11.12 Amendment/Change Orders. ....	25
Section 11.13 Headings.....	25

**Contract Between the County of Volusia, Florida  
and  
Strategic Advisory Group LLC  
for  
Tourism and Marketing, County of Volusia, Fl.**

THIS CONTRACT is entered into by and between the COUNTY OF VOLUSIA, a body corporate and politic and a political subdivision of the State of Florida, whose principal place of business is located at 123 West Indiana Avenue, DeLand, Florida 32720 ("County"); and Strategic Advisory Group LLC a limited liability company organized under the laws of Georgia and authorized to transact business in the State of Florida, whose principal place of business is located at 3848 Saint Annes Court, Duluth, Georgia, 30096 ("The Consultant").

**RECITALS:**

WHEREAS, the County desires to retain the services of competent and qualified Consultant to provide a Marketing and Tourism study for the County of Volusia; and

WHEREAS, the County has propounded Request for Statement of Qualifications No.11-SQ-85JJ (the "RSQ") seeking a qualified firm to perform a tourism and marketing study, and has received responses from various potential vendors; and

WHEREAS, The Consultant is competent and qualified to furnish services to the County, has provided a responsive and responsible proposal to the RSQ, and desires to provide professional services according to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the foregoing recitals which are deemed material and incorporated herein by this reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by The Consultant and County, the parties agree and stipulate as follows:

**Article 1. - Definitions**

**Section 1.01**

1. **Addendum:** A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the Agreement documents.
2. **Agency:** The state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under §380.06 or §163.3220-163.3243 of the Florida Statutes.
3. **Agreement:** This agreement or contract, including its articles, exhibits, attachments and Contract Documents.

4. **Amendment:** An amendment to this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County and authorizing an addition, deletion, or revision in the Scope of Services, or an adjustment in this Contract or a statement of work, contract price, or extension of the Contract.
5. **Bid Documents:** The official forms on which the County requires formal bids to be prepared and submitted by the bidder.
6. **Calendar Day:** Any day, including Saturdays, Sundays, and Holidays, regardless of weather conditions.
7. **Compensation:** The amount paid by the County to the Consultant for services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Consultant under a Statement of Work which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete Work under a Project or a statement of work.
8. **Confidential Information:** Information which is exempt from disclosure pursuant to Chapter 119, Public Records Law, Florida Statutes (2010), and Article I, Section 24 of the Florida Constitution (“Florida Public Records Law”), and Chapter 812 of the Florida Statutes (2010) (hereinafter “Confidential Information”).
9. **Confidential Materials:** 1) Materials which are exempt from disclosure pursuant to Florida Public Records Law, or the United States if the same preempts Florida law, and is also specifically designated in writing as “confidential information” or a “trade secret” by the disclosing party; 2) materials, including claim files or data files which contain employee social security numbers, banking information; and 3) any other materials or information meeting the definition of “trade secret” set forth in Section 812.081(c) of the Florida Statutes. The term “Confidential Materials” does not include the following:
  - i. Information already known or independently developed by the receiving party without use of disclosing party’s confidential information;
  - ii. Information in the public domain through no wrongful act of the receiving party;
  - iii. Information received by the receiving party from a third party without an obligation to maintain the information confidential;
  - iv. Information regularly disclosed by the disclosing party to third parties without restriction on disclosure; or

- v. Information required to be disclosed by requirement of law or judicial order, provided that the receiving party notifies the disclosing party of such requirement prior to disclosure, and provided further that the receiving party makes diligent efforts to limit disclosure.
- 10. **Contract:** This agreement, including its articles, exhibits, attachments and Contract Documents.
- 11. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.
- 12. **Contract Documents:** Contract documents shall include but are not limited to the following: 1) This Contract, and its Exhibits A and B, 2) Certificates of Insurance, addendums, or attachments, 3) Notice of Award and/or Notice to Proceed, 4) the conditions of this Contract (general, special, supplementary, or other), 5) drawings, 6) specifications, 7) written interpretations, 8) change orders, 9) addenda (including RSQs, RFPs (e.g., 11-SQ-85JJ) and Consultant's response to RSQs) issued before the execution of this Contract, and 10) any modifications or amendments to this Contract issued after its execution.
- 13. **County:** The phrase "County of Volusia, Florida", shall be synonymous with the term "County."
- 14. **County Work Day:** Monday through Friday from 8:00 a.m. to 5:00 p.m. of each week, excluding County holidays.
- 15. **Deliverable:** The result(s) or end products or services of this Contract or SOW that meet the defined specifications, warranties, and functional parameters articulated in a SOW for this Contract, e.g., included but not limited to: design drawings\specifications, structures, equipment, software, studies, reports, written documentation, training, systems or processes, the Licensed Software, System and Documentation to be provided by the Consultant for use by County, whether on site or remotely accessed, and all Services to be performed for and provided to County by the Consultant under the Contract.
- 16. **Effective Date:** **The date that this** Contract is fully executed by the Consultant and the County.
- 17. **Firm:** Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the discipline for which the County is contracting.
- 18. **Force Majeure Event:** An event described in Section 12.04 hereof.
- 19. **Project Manager:** An employee of a party who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the party.

20. **Proposal:** The document submitted by the Consultant in response to the formal solicitation (RSQ No. 11-SQ-85JJ) used to determine if the Consultant is highly qualified.
21. **Services:** Those services defined in Scope of Services, and Exhibits A and B to be performed by the Consultant pursuant to this Contract and its attached exhibits, including: the work, duties and obligations to be carried out and performed by the Consultant under the Contract.
22. **State:** State of Florida.
23. **Statement of Work or Scope of Services (SOW):** The services/work, herein defined in this Contract under a statement of work or scope of services that is agreed to by the parties in writing, which includes responsibility for performing and complying with all incidental matters pertaining thereto.
24. **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Consultant under the Contract, including the furnishing of all labor, materials, equipment and other incident.

**Section 1.02 Exhibits.**

Exhibit A – Request for Statement of Qualifications (RSQ)11-SQ-85JJ

Exhibit B – Strategic Advisory Group, LLC proposal to 11-SQ-85JJ

**Section 1.03 Order of Precedence.**

In the event of a conflict between provisions of the various documents contained herein, the documents shall govern and be controlling in the following order of precedence:

- First: This Contract
- Second: The RSQ attached as Exhibit A
- Third: The Consultant’s Proposal, attached as Exhibit B

**Article 2. - Term and Termination**

**Section 2.01 Term**

The term of this Contract shall commence as of November 1, 2011, and end October 31, 2014. (3 years).

**Section 2.02 Termination.**

- A. This Contract may be terminated by 1.) either party upon the material breach by the other party if such breach is not cured within 30 (thirty) days of written notice from the non-breaching party, or 2.) for convenience or non-appropriation by County upon at least 30 (thirty) calendar days, prior written notice to the Consultant whenever the County shall determine that such termination is in the



best interest of the County. Notice shall be provided in accordance with Section 11.03 Notices.

- B. The Consultant may cancel this Contract with 180 (one-hundred eighty) days written notice to the Director of Purchasing and Contracts. Failure to provide proper notice to the County may result in the Proposer being barred from future business with the County.
- C. After receipt of a notice of termination, the Consultant shall submit to the County its termination claim for amounts owed by County (which shall include without limitation all amounts due for work or Services performed through the date of termination), in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than 30 (thirty) days from the effective date of termination, unless one or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such 30 (thirty) days period or authorized extension thereof. Upon failure of the Consultant to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall thereupon pay to the Consultant the amount so determined
- D. Non-Appropriation. This Contract may be terminated by the County or Consultant if the County does not appropriate the funding in any fiscal year necessary to pay the compensation set forth in the Article 4. Compensation and Payment, in this Contract.
- E. In the event that the Contract is terminated by the County or Consultant for non-appropriation, Consultant shall be paid in accordance with Article 2. - Term and Termination, and Article 4. Compensation and Payments. Consultant shall be paid 1.) to the date of termination on a prorated basis for any task and Deliverable designated for payment that was started but not completed and/or 2.) for any work or Deliverable that has been completed but not has yet been paid. County's obligation to pay Consultant under this Contract is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation.
- F. Upon being notified of County's election to terminate for default of Consultant, non-appropriation or convenience, Consultant shall refrain from performing further work or incurring additional expenses under the terms of this Contract which is not specifically authorized in the Notice of Termination.

G. If termination of this Contract occurs for any reason:

1. Except as otherwise provided in this Contract, Consultant shall return to the County or destroy all County confidential information in Consultant's possession and shall certify the destruction or return of said information in a written document signed by the duly authorized representative of the Consultant that all such information has been destroyed or returned, provided that Consultant shall be permitted to retain an archival copy of any such confidential information (provided it continues to maintain the confidentiality of such as prescribed herein) to the extent necessary to have a record of the Services performed hereunder.
2. For all undisputed outstanding invoices submitted to the County for Work completed or Deliverables delivered prior to the effective date of the termination, the County shall cause payments to be made to Consultant within 45 (forty-five) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment within 15 (fifteen) days of receipt and County shall pay any undisputed amount within 45 (forty-five) days, subject to Article 3.03 and 3.04 - Compensation and Payments, in this Contract. Any disputed amounts on any invoices shall be subject to the dispute resolution process set forth in the Article entitled Dispute Resolution in the Contract.

H. In the event of termination by the County for non-appropriation, for all items or products ordered by Consultant before receipt by Consultant of the Notice of Termination which Consultant could not cancel without imposition of a fee, the County shall cause payments to be made to Consultant within 45 (forty-five) days of receipt of an undisputed ..

### **Article 3. - Scope of Services**

#### **Section 3.01 Overview**

Strategic Advisory Group shall provide services under this contract and act as consultant and advisor to the County in accordance to the Scope of Services as specifically set forth in this Article 3 and in Accordance with the solicitation documents including RSQ No. 11- SQ-85JJ, and all addendums, thereto (hereafter RSQ) and Strategic Advisory Groups response to the RSQ No. 11-SQ-85JJ, hereafter Strategic Advisory Groups, Response, except as modified in this contract and only to the extend modified thereby. The RSQ and the Response are attached hereto as Exhibit "A" and Exhibit "B" respectively, and both are incorporated herein by this reference.

## Section 3.02

### A. Immersion

1. Consultant will review the current marketing plans for the County and the Ocean Center. Consultant will focus on all aspects including all the channels that are currently being utilized and their return on investment. The Consultant will meet with the staff leadership in the agencies and Ocean Center to understand all aspects of the current plans. This will include a review of the current return on investment (“ROI”) of the marketing activities to assess the effectiveness with the target markets. The marketing areas the Consultant will study will include:
  - a. Tradeshows and Events
    - i. Consultant will review the current schedule of events and tradeshows and determine the individual return by activity.
  - b. Public Relations and Communications

Consultant will review the current resources allocated and the ad equivalency that is generated in all of the Public Relations outlets. These would include:

    - i. Consumer
    - ii. Travel Trade
    - iii. Meetings trade
  - c. Social Media
    - i. Consultant will review the current activity and programming for the major social media platforms. Consultant will look at growth trends in consumer and meeting planner engagement.
  - d. On-line programs
    - i. Consultant will review on-line activity and SEO opportunities. The Consultant will review conversion with on-line space.
  - e. Traditional Advertising – Specific targets
    - i. Consultant will review the return on the current media schedule and level of spending. Consultant will study the leverage opportunities with advertising dollars.
    - ii. Consumer
    - iii. Travel Trade
    - iv. Meetings Trade
  - f. Co-op or Leveraged Plans

Consultant will review current programs and study stakeholder participation. Consultant will show the importance, and demonstrate how dollars are being leveraged through coop programs as well as how stakeholders are driving additional reach.

2. CONSULTANT shall review the current deployment of resources to gain an understanding of the return on each of the targeted markets in both the leisure and meetings areas. Consultant shall analyze the consistency of the deployment and priorities in the four plans. Consultant shall also review any current analysis and research that exists to support the current priorities.
  3. CONSULTANT shall review the list of who is currently considered a key competitor in each of the major markets. Consultant shall review lost business in the meetings area to assess how this can influence deployment and future strategies.
  4. CONSULTANT shall meet with County leadership to determine other key stakeholders that should be part of the immersion process
- B. Prepare SWOT analysis. CONSULTANT shall prepare a preliminary SWOT analysis of the four marketing plans based on the information gathered and meetings held in the Immersion process. Consultant shall present this to the County team for review and refinement, as well as to determine if any additional areas or stakeholders should be included. This shall form a basis for the remaining study steps. The SWOT shall be refined throughout the remainder of the analysis and presented in its final form in the final report.
- C. Benchmarking – Marketing Resources. CONSULTANT shall benchmark Volusia County’s performance to similar destinations to identify opportunities for improvement. Consultant shall go further than just looking at overall resources; Consultant shall interview leadership at each destination to gain insight on deployment and priorities within each destination. The Consultant shall include a minimum of five similar destinations which operate currently under a successful and effective marketing plan in the study. The Immersion process shall drive the areas that ultimately need to be benchmarked. The following areas shall be addressed:
1. Destination – County
    - a. Population
    - b. Airlift
    - c. Hotel ADR
  2. City-wide hotel supply – Ocean Center
    - a. Square feet offered
    - b. Hotel room block
    - c. Published pricing
    - d. Marketing Dollars
    - e. Market Deployment

3. Tourism Marketing
  - a. Funding
  - b. Overall staffing
  - c. Finance & administration investment and staffing
  - d. Media and PR investment and staffing
  - e. Social media resources
  - f. Media dollars
  - g. Web site investment and hits
  - h. Convention services investment, staff, and groups served
  - i. Convention sales investment, staff and performance
  - j. Tourism marketing investment, staff, and performance
  
- D. Ocean Center Marketing. Consultant shall review and assess the marketing of the Ocean Center. This shall include an assessment of the role of the CVB versus the Ocean Center staff, and how the two work together to best book the facility. The Consultant shall meet and interview both sales teams to understand how the current process is enacted. The Consultant shall then bring in the benchmark data and other best practices learned over the years to outline opportunities to improve the effectiveness of the efforts. Consultant shall review comparable marketing resources, as well as options on how those marketing dollars are deployed. Consultant shall utilize experience in benchmarking and performance improvement work for arenas and performing arts centers. The Consultant shall utilize current relationships in the entertainment community to assess opportunities in the concert/family show area. The Consultant's analysis shall include a summary of the current practice at Ocean Center, a summary of best practices, and recommendations for potential areas of improvement.
  
- E. Volusia County – Marketing Budget Comparison. Utilizing the benchmark data gathered in Step 3 above, the Consultant shall compare Volusia metrics to those of the comparable destinations to understand where Volusia is performing well, and where there might be opportunity for improvement. The analysis shall take into account broad destination attributes, convention center offering, hotel offering, marketing resources and resource deployment. The analysis shall need to account for the differences in destination sizes and offerings, and calculate metrics on the appropriate per capita, or per room or per room night or per convention center square foot, etc. basis. The partners of the Consultant have overseen the development of marketing plans and shall use this experience to inform our recommendations.
  
- F. Evaluate Structure. Consultant shall evaluate the structure utilized for marketing the community. This shall include assessing all organizations involved in area marketing, which could include the CVB, Convention Center, County, City and Chamber. The Consultant shall meet with all organizations involved and document the process, resources, roles and responsibilities of each organization.

The Consultant shall also incorporate the benchmark findings and experience with over 100 destinations to understand how the structure could be improved.

- G. Evaluate Prioritization of Resources and Markets. Consultant shall evaluate the prioritization of resources and markets. To do this, Consultant shall survey key target markets to understand the effectiveness of past Volusia marketing efforts and to identify if there are any tourism areas that customers are interested in, but are not being effectively marketed. The internet-based survey shall be sent to current and targeted convention center meeting planners, tour operators and any visitor emails maintained by the CVB or County.

Consultant shall compile the survey results to inform future reallocation of resources. Consultant shall use the results to make recommendations on market prioritization, as well as comment on the effectiveness of each channel currently utilized. The Consultant shall also analyze the perception of marketing the area through surveys and how that affects the market groups.

- H. New Funding Opportunities. Consultant shall help identify new funding opportunities. Consultant shall utilize a number of unique techniques to raise project resources. To understand the opportunities in Volusia, Consultant shall meet with the County finance department and other leaders to determine where new revenue opportunities might exist. Consultant shall also meet with key tourism stakeholders to assess how public marketing dollars can be leveraged with private dollars. Consultant shall quantify the funding opportunities and propose additional approaches where possible.
- I. Reporting Metrics and ROI Analysis review reports and metrics and comment. Consultant shall work with the County to create reporting measures that are accepted and understood by both public sector and private sector stakeholders. Consultant shall with meet with marketing teams and public leaders to understand which measures are working and which are not. Consultant shall compare measures used to best practices in the industry and to those of the benchmark destinations. Based on this, Consultant shall recommend changes to measures, if any, to best evaluate marketing on an ongoing basis. Such recommendations shall include, but not be limited to, ongoing survey methodology to ensure valid visitor spending multipliers are utilized by Volusia County. The Consultant's recommendations shall include a monthly reporting plan and suggested reports that can be distributed to stakeholders. This can insure transparency and accountability. Reliable measures are a key component in working on new industry driven funding initiatives. The Consultant shall also complete a ROI showing the savings and incentives if all recommendations are utilized.

- J. Prepare Final Report and Recommendations – Final Presentation. Consultant shall prepare a report summarizing the findings and making key recommendations on structural opportunities. Consultant shall present a draft report to the County team for review and receive direction regarding any need to refine information. The final report shall include:
1. Overall Assessment
  2. SWOT Analysis
  3. Marketing Resource – Benchmarking Study
  4. Ocean Center Marketing Analysis with Comparative Data
  5. Volusia County Marketing Analysis
  6. Current Structure Analysis and Future Recommendations with financial implications
  7. Recommended Marketing Funding reallocation and ROI calculation
  8. New funding recommendations with implementation steps

**Section 3.03 Change in Scope of Services.**

The County may order changes in the Services consisting of additions, deletions, or other revisions within the Scope of Services of the Contract. No claims may be made by the Consultant the amount of compensation of the Consultant or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to this Contract and approved in accordance with the Purchasing and Contracts Division policies and procedures. If the Consultant believes that any particular service is not within the Scope of Services, is a material change, or shall otherwise require more compensation to the Consultant, the Consultant must immediately notify the County's Project Manager in writing of this belief. If the County's Project Manager believes that the particular work is within the Scope of Services of the Contract, the Consultant shall continue with the work at the cost stated for the Scope of Services for this Contract from the Effective Date of this Contract. Compensation and Payments

**Section 3.04 Compensation**

As consideration for the Consultant's satisfactorily performing the Scope of Services and complying with other terms of this Contract, the County shall pay the Consultant a fee of EIGHTY-NINE THOUSAND (\$89,000.00.) DOLLARS for the project and \$195.00 per hour blended rate for additional services requested by the County. This fee includes up to four trips to Volusia County.

### **Section 3.05 Payment**

No later than 15 working days following execution by both parties of this Contract, the Consultant shall meet with the Project Manager to establish a written project completion timeline and the project milestone events or deliverables for each project progress payment; such document shall be signed by Consultant and the Project Manager and attached to the Contract as Exhibit C. The Consultant shall submit an invoice for services rendered as progress payments. For any additional services pursuant to section 3.03 to be billed pursuant to section 3.04, the Project Manager will seek the proper authority level of approval prior to authorizing the service and determine the timeline and milestones to include in the progress payment timeline. The invoice shall be submitted to the County Project Manager and approved by the County's Project Manager prior to processing for payment. The County shall remit full payment on all undisputed invoices within 45 (forty-five) days from receipt by the County's Project Manager or his/her designee, of the invoice(s) and receipt and acceptance of the services, whichever is later. Pursuant to Chapter 218, Florida Statutes, the County shall pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within 30 (thirty) days of due date.

### **Section 3.06 No Contingent Fees**

The Consultant warrants and represents that it has not employed or retained any company or persons, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract and that Consultant has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Consultant further warrants and represents that it shall not receive any fee, commission, percentage, gift, or other consideration from any other entity coverage under this Contract contingent upon or resulting in any way from the agreement of the County to obtain coverage from such insurance company. For the breach or violation of this provision, County shall have the right to terminate the Contract at its discretion, without liability, and to recover from the Consultant all such fee, commission, percentage, gift or consideration.

## **Article 4. - Personnel of Consultant**

### **Section 4.01 Supervision**

The Consultant shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to insure performance of obligations and duties as set forth herein. The Consultant shall hire, compensate, supervise, and terminate members of its work force, and the Consultant shall direct and control the manner in which work is performed including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform. The Consultant shall be responsible for all income tax, social security and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or subconsultants' wages or salaries. Benefits, if any, for the Consultant's employees and/or sub consultants shall be the responsibility of



the Consultant including, but not limited to, health and life insurance, retirement, liability/risk coverage, and worker's and unemployment compensation.

**Section 4.02 Applicable Laws**

The Consultant shall be responsible for ensuring that its employees, and sub consultants comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

**Section 4.03 Immigration Reform and Control Act of 1986.**

The Consultant certifies that it does not and shall not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

**Section 4.04 Employment Discrimination.**

During the performance of the Contract, the Consultant agrees to the following requirements:

- A. The Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the Consultant. The Consultant agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, shall state that such is an Equal Opportunity Employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Article.
- D. The Consultant shall include the provisions of the foregoing paragraphs (a) through (c) in every subcontract or purchase order so that the provisions shall be binding upon each Consultant or vendor.

**Section 4.05 Fair Labor Standards Act.**

The Consultant and any sub-consultant shall pay all employees working on this Contract not less than the minimum wage specified in the Fair Labor Standards Act as amended.

**Section 4.06 Americans with Disabilities Act**

Consultant shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Contract. Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by

County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

**Section 4.07 Drug-Free and Smoke-Free Workplace**

The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that its personnel and the personnel of each of its sub consultants agree to adhere to the County's policies on drug-free and smoke-free work place during the term of this Contract.

**Article 5. - Consultant as Independent Contractor**

The Consultant shall provide the services required herein strictly in an independent contractual relationship with the County and, except as expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. The County shall not provide any space, facility, vehicle, or equipment to the Consultant to perform any of the duties required by the Contract nor shall the County pay for any business, travel, office, or training expense or any other Contract performance expense not specifically set forth in the Scope of Services. The Consultant is not exclusively bound to the County and may provide service to other private and public entities as long as the service by the Consultant for such entities does not conflict with the Consultant's services to the County.

**Article 6. - Dispute Resolution**

**Section 6.01 Resolution**

The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section. The Consultant and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of the applicable Project and this Agreement and any applicable Scope of Services. Issues shall be escalated to successive management levels as needed.

**Section 6.02 Dispute**

If a dispute develops between the parties concerning any provision of a Project or this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) days, that party known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

**Section 6.03 Upon issuance of a Dispute Notice**

The Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) business days, the Project Managers shall escalate the dispute as indicated below.

**Section 6.04 Formal Dispute Resolution**

At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

**Article 7. - Deliverables and Standards**

**Section 7.01 Deliverables**

The Consultant shall deliver to the County Project Manager any and all insurance policies and any other deliverable required under the Scope of Services of this Contract in a format approved by the County's Project Manager.

**Section 7.02 Failure to Deliver**

In the event of failure of the Consultant to deliver services in accordance with the Contract terms and conditions, the County, after due written notice, may procure the services from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

**Section 7.03 Standards**

The Consultant shall be responsible for the professional quality and the accuracy of all deliverables and services provided under this Contract and shall, without additional compensation, correct any errors in the same. Deliverables prepared by the Consultant in response to the requirements of this Contract shall, unless otherwise provided for in the Contract, be thoroughly researched for accuracy of content, be grammatically correct and not contain errors, be numerically accurate, be submitted in the format approved in advance by the County's Project Manager, and be submitted for advance review and comment by the County's Project Manager. The cost of correcting errors, correcting report data, or making other revisions required to bring the deliverable into compliance with the Contract requirements shall be borne solely by the Consultant.

## Article 8. - Indemnity, Insurance, Bonding

### Section 8.01 General Insurance Requirements

- A. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" or better in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. and a Financial Size Category of "X" or larger.
- B. Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Consultant or its Sub consultants for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.
- C. Waiver of Subrogation. The County and the Consultant hereby waive all rights against each other, their Sub consultants to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Consultant shall require similar waivers from all its Sub consultants. This provision applies to all policies of insurance required under this Contract (including Workers' Compensation, and general liability).
- D. County Not Liable for Paying Deductibles. For all insurance required by Consultant, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Consultant's business or any Subcontractor performing Work or Services on behalf of the Consultant or for the Consultant's benefit under this Contract.
- E. Cancellation Notices. During the term of this Contract, Consultant shall be responsible for promptly advising and providing the County's Project Management and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) calendar days of receipt of such notice or change.
- F. For any on-site Work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Contract.
- G. Deductibles. For purposes of this Contract, Consultant shall not obtain an insurance policy with a deductible or self-insurance provision.

### **Section 8.02 Proof of Insurance**

- A. The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- B. The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Consultant shall not commence Work or provide any Service until the Consultant has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the County. As such, the Consultant, upon request of County, shall furnish copies of the following types of insurance policies and any changes or amendments thereto, immediately, to County's Risk Management and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. This Contract may be terminated by the County, without penalty or expense to County, if at any time during the term of this Contract proof of any insurance required hereunder is not provided to the County.
- C. All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Article 9. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County. This Consultant may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
- D. The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate this Contract but County has no obligation to renew any policies.

### **Section 8.03 Required Types of Insurance**

- A. The Consultant shall purchase and maintain, at its own expense, during the term of this Contract the following types and amounts of insurance in the form and from companies satisfactory to the County.
- B. Workers' Compensation Insurance. Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or provide Work or Services under this Contract or that is in any way connected with Work or Services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence.

1. Consultant, or any associated or subsidiary company doing Work on County property or providing Services under this Contract must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence for Employer's liability coverage. Further, if the Consultant fails to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Consultant, or any associated subsidiary company of Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).
  
  2. Commercial General Liability Insurance. Commercial General Liability insurance, with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) and the aggregate limit shall be not less than ONE MILLION DOLLARS (\$1,000,000) on an occurrence basis including coverage for the Consultant's operations, and "broad form" property damage coverage's protecting itself, its employees, agents, contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant or Consultants actions arising from Work or Services performed under this Contract. Public liability coverage shall include either Broad Form Blanket Contractual Liability insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Consultant's contract to indemnify, defend, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured unless the County's Risk Manager determines that it should be named as an additional named insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the commercial general liability policy shall be endorsed to provide the Designated Aggregate Per Location Endorsement ISO form CG 25 04 05 09 or equivalent.
- C. Motor Vehicle Liability. The Consultant shall secure and maintain during the term of this Contract, motor vehicle coverage in the amounts of no less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) per person and ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury)and (including "Any Auto" coverage which includes automobiles, whether owned, non-owned, or hired), protecting itself, its employees, agents, or lessees, and\or subsidiaries

and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.

- D. Motor Vehicle Liability. The Consultant shall secure and maintain during the term of this Contract, motor vehicle coverage in the amounts of no less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) per person and ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury)and (including “Any Auto” coverage which includes automobiles, whether owned, non-owned, or hired), protecting itself, its employees, agents, or lessees, and\or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.
- E. Professional Liability. The Consultant shall ensure that the Consultant or the Consultant’s Subcontractor secures and maintains, during the term of this Contract, Professional Liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per claim, with a maximum deductible of TEN THOUSAND DOLLARS (\$10,000). Such policy shall cover all of the Consultant’s or Sub-consultant’s professional liabilities whether occasioned by the Consultant or its Subcontractors, or their agents or employees.
1. It is the Consultant's responsibility to verify, cause and maintain this coverage in strict accordance with the stipulations of this Contract. If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.
- F. Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

#### **Section 8.04 Survivability**

The provisions of this Article shall survive the cancellation or termination of this Contract.

### **Article 9. - Indemnification of Liability and Indemnification**

#### **Section 9.01 Consultant Indemnification**

Consultant shall, at its own expense, indemnify and defend, hold harmless County and its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to any person or damage to property), damages, losses and expenses including reasonable attorney’s fees caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and its Sub consultants performing Work or Services under this Contract, caused in whole or in part by any negligent act or omission of Consultant, any of Consultant’s agents, employees, contractors, or anyone employed by

any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by a party indemnified under Article 10. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Contract.

**Section 9.02 Claims Against County**

In all claims against the County, or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees by any employee of Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, no indemnification obligation shall be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant, or any Sub-consultant under Florida's Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

**Section 9.03 Consultant's indemnification obligations under this Section.**

Limitation of Liability and Indemnification of County, are subject to County or the indemnified party giving Consultant (a) prompt written notice of any Indemnifiable Claim; (b) reasonable assistance in Consultant's defense of the Indemnifiable Claim; and (c) sole authority to defend or settle the Indemnifiable Claim, provided that County or the indemnified party shall have the right to approve any settlement of an indemnifiable claim to the extent such settlement imposes any obligations on County or the indemnified party. County, or the indemnified party, may retain its own legal counsel at its own expense to monitor such litigation.

**Section 9.04 Sovereign Immunity**

The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of the Contract to the contrary, nothing in the Contract shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in the Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

**Section 9.05 Breach of Contract**

If either party should become entitled to claim damages against the other party for breach of contract arising from the Contract, the party in breach shall be liable only for the amount of actual direct damages up to a maximum amount equal to the sums paid or payable under the Contract.

- A. In no event shall either party be liable to the other for any incidental, indirect, special, punitive or consequential damages even if the party knew or should have known about the possibility of such damages for any provision of the Contract.



## **Article 10. - County Government Policies**

### **Section 10.01 Modifications Due To Public Welfare or Change in Law.**

The County shall have the power to make changes in this Contract as the result of changes in law and/or ordinances of Volusia County to impose new rules and regulations on Consultant under this Contract relative to the scope and methods of providing Services as shall from time-to-time be necessary and desirable for the public welfare. The County shall give Consultant notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of Consultant. In the event any future change in federal, state or county law or the Ordinances of Volusia County materially alters the obligations of Consultant, or the benefits to the County, then this Contract shall be amended consistent therewith. Should these amendments materially alter the obligations of Consultant, then Consultant or the County shall be entitled to an adjustment in the rates and charges established under this Contract. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The County and Consultant agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law.

### **Section 10.02 Compliance with Laws**

Consultant shall keep fully informed of all applicable federal and state laws, all applicable local laws, ordinances, rules, regulations, and all applicable orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Consultant shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. Consultant shall protect and indemnify County and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Consultant, its representatives, subcontractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Consultant shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Volusia County, or municipalities when legally required and maintain same in full force and effect during the term of this Contract. Consultant' obligations under this Article shall be limited to those laws, ordinances, rules, regulations, orders and decrees which are published and reasonably available to the legal counsel for Consultant and/or the general public.

### **Section 10.03 Truth-In-Negotiation Certificate**

Consultant's signature on this Contract shall act as execution of a truth-in-negotiations certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract are accurate, complete, and current at the time

of contracting and that it has disclosed all obligations, debts or fees owed to the County or pending before the County prior to the execution of this Contract.

**Section 10.04 Public Records Law**

Consultant acknowledges the County's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. Consultant acknowledges that the County is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Contract and that said statute controls over the terms of this Contract.

**Section 10.05 Audit Right and Retention of Records**

Consultant agrees to maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. County shall have the right to audit the books, records, and accounts of Consultant that are directly related to the Contract. Consultant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Contract. Consultant shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Consultant's records, Consultant shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Consultant. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

**Article 11. - Miscellaneous Provisions**

**Section 11.01 Entire Contract.**

This Contract constitutes the entire contract between the parties. There are no understandings or agreements related hereto other than those which are expressed herein, and all prior negotiations, agreements, and understandings, whether oral or written, are superseded by this Contract, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

**Section 11.02 No Third Party Beneficiaries.**

Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

**Section 11.03 Notice**

Each notice required under this Contract shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

<i>County:</i> Director of Purchasing and Contracts County of Volusia 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 Phone: 386-822-5773  With copy(s) to: County Attorney (address above, Room 301)	<i>Consultant:</i> Jeffrey Sachs Strategic Advisory Group, LLC 3848 Saint Annes Court Duluth, Ga. 30096 Phone: 678-584-0705
--	--

**Section 11.04 Force Majeure.**

The parties shall exercise every reasonable effort to meet their respective obligations hereunder, but shall not be liable for delays resulting from causes beyond their reasonable control, including, but not limited to, compliance with any government law or regulation, acts of nature, acts or omissions of the other party, government acts or omissions, fires, strikes, national disasters, wars, acts of terrorism, riots, or transportation problems. Any such cause shall extend the performance of the delayed obligation to the extent of the delay so incurred.

**Section 11.05 Governing Law.**

This Contract shall be governed by the laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida.

**Section 11.06 Venue and Jurisdiction.**

All legal proceedings brought in connection with this Contract may only be brought in a state court located in the State of Florida unless the cause of action is only cognizable in federal court. Venue in state court shall be exclusively in Volusia County, Florida. Venue in federal court shall be exclusively in the United States District Court, Middle District of Florida, Orlando Division. Each party hereby agrees to submit to the personal jurisdiction of those courts for any lawsuits filed there against such party arising under or in connection with this Contract.

**Section 11.07 Waiver of Jury Trial.**

By entering into this Contract, Consultant and County hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to the Contract for any litigation limited solely to the parties of the Contract.

**Section 11.08 Attorneys Fees and Costs.**

Each party shall pay its own costs and attorney's fees relating to any dispute, mediation or litigation arising out of this Contract.

**Section 11.09 Severability.**

If any provision of this Contract shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Contract, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Contract shall remain in full force and effect unless County or Consultant elect to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final. Prior to terminating this Contract, the parties may agree to substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.

**Section 11.10 Waiver.**

Failure by either party or both parties to enforce any provision of the Contract shall not be deemed a waiver of such provision or modification of the Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Contract.

**Section 11.11 Assignment and Performance.**

- A. Consultant may not assign or otherwise convey Consultant's rights and/or obligations under this Contract without first providing County with a processing fee of FIVE HUNDRED DOLLARS (\$500) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Contract, Consultant shall, no less than one hundred twenty (120) days prior to the assignment's proposed effective date, provide County with a written request for County's consent in accordance with Section 12.03 – Notice of this Contract.
- B. Failure by the Consultant to obtain the County's consent in accordance with this section prior to assignment or other conveyance shall: 1.) constitute a material breach of the Contract; and 2.) entitle the County to retain any and all legal rights, claims and defense to enforce this section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Consultant or any person or entity prior to the Consultant obtaining the County's consent to the

assignment shall not constitute a waiver of the rights of the County under this section.

- C. Nothing herein shall preclude the right of the County to waive its rights under this section but no waiver shall be granted by the County without amendment to the Contract. The Consultant is hereby placed on notice that the County may demand a discount of up to ten percent (10%) from those rates or compensation for the goods or services established in the Contract as a condition to execution of the amendment.

**Section 11.12 Amendment/Change Orders.**

No modification, amendment, change order, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality as this Contract and executed by a duly authorized official of each party.

**Section 11.13 Headings**

Any paragraph and/or section headings used in this Contract are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Contract.

*Balance of this page intentionally left blank*

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the respective dates under each signature:

COUNTY OF VOLUSIA

STRATEGIC ADVISORY GROUP, LLC

By: \_\_\_\_\_  
Frank T. Bruno, Jr.  
County Chair

By: \_\_\_\_\_  
Jeffrey Sachs  
Managing Partner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
James T. Dinneen  
County Manager

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibits Incorporated therein:  
Exhibit A: RSQ 11-SQ-85JJ  
Exhibit B: Consultant's Proposal

**RESOLUTION NO. 2011-**

**RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2011-12 BUDGET, CHANGING THE ESTIMATED TOTAL REVENUES,**

**WHEREAS, changes in anticipated revenues and expenditures of the County of Volusia necessitates a revision of the appropriations for Fiscal Year 2010-12.**

**NOW, THEREFORE, BE IT RESOLVED by the County Council of the County of Volusia, Florida, in open meeting duly assembled in the Thomas C. Kelly Administration Center, DeLand, Florida, this 10th day of November A.D. 2011, as follows:**

**SECTION I: Revising the following funds as specified herein:**

**ACCOUNTS TO BE ADJUSTED**

---

**Ocean Center 118**

**Revenues:**

118-000-0000-8999	Appropriated Fund Balance	\$ 89,000
-------------------	---------------------------	-----------

<b>Total Ocean Center 118 Revenues</b>	<b><u>\$ 89,000</u></b>
--	-------------------------

**Expenditures:**

<i>Nondepartmental</i>	<b>Appropriation Unit</b>	
118-130-1400-3400	136 Contracted Services - Marketing Study	\$ 89,000

<b>Total Ocean Center 118 Expenditures</b>	<b><u>\$ 89,000</u></b>
--	-------------------------

**0**

---

**SECTION II. This resolution shall take effect immediately upon its adoption. DONE, ORDERED, AND ADOPTED IN OPEN MEETING.**

**COUNTY COUNCIL  
VOLUSIA COUNTY, FLORIDA**

**BY: \_\_\_\_\_  
FRANK T. BRUNO, JR.  
County Chair**

**ATTEST:**

---

**JAMES T. DINNEEN  
County Manager**

