



**CONTRACT FOR PROFESSIONAL DESIGN SERVICES FOR DIRKSEN DRIVE
(CR 4162) (US 17/92 TO SUNRISE BOULEVARD)**

Between

THE COUNTY OF VOLUSIA

AND



Contract No. 26-SQ-108SR

County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 302
DeLand, Florida 32720-4608
www.volusia.org/purchasing

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract made and entered by and between [REDACTED], duly authorized to conduct business in the State of Florida, whose principal place of business is located at [REDACTED] (hereinafter the "Consultant") and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter "County").

RECITALS:

WHEREAS, the County requires a competent and qualified consultant to provide professional services in support of the County's operations; and

WHEREAS, the County has requested and received expressions of interest for the retention of services of the consultants in accordance with Request for Statement of Qualifications No. 26-SQ-108SR for Professional Design Services for Dirksen Drive (CR 4162) (US 17/92 to Sunrise Boulevard); and

WHEREAS, the County has determined that the Consultant is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual; and

WHEREAS, the County has determined pursuant to Florida Statutes 287.055 (a/k/a "Consultant's Competition Negotiation Act") and 337.105 that the Consultant is competent and qualified to furnish said services stated hereunder to the County and Consultant desires to provide professional services according to the terms and conditions hereunder, and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by 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:

1. DEFINITIONS.

For this Contract and any incorporated exhibits, certain terms, phrases, words and their respective derivations shall have the meaning set forth and defined therein and shall be applicable in both. Definition of terms in the Contract shall first be governed by this Contract, and second by the incorporated Scope of Services/Work (Attachment A), third by the incorporated Fee Schedule (Attachment A-1), fourth by the incorporated Preferred Alternative Plans (Exhibit A), and fifth by the incorporated Volusia County Technical Specifications (Exhibit B). In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence. If there is no applicable definition as described above, the terms, phrases, and words, and their respective derivations when used in this Agreement and the Scope of Work, shall have the meanings ascribed to them in the following order of precedence: first, in the most current edition Black's Law Dictionary and last, in the most current edition of the Oxford English Dictionary, if a term is not defined in the Agreement or Black's Law Dictionary.

- 1.1. **Addendum:** A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the contract documents including drawing and specifications prepared by the Consultant, approved and issued by the County and/or distributed to third parties.
- 1.2. **Affidavit:** The instrument which is to be signed by the Consultant or Consultant and submitted to the County upon the County's request through the Project Manager, upon completion of the job,

showing that all bills have been paid. It shall also mean such instrument that may be requested by the County incidental to partial payments.

- 1.3. **Amendment:** An amendment to this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County of equal dignity herewith authorizing an addition, deletion, or revision in the scope of work that is issued after execution of this Contract.
- 1.4. **Application for Progress Payment:** The current estimate form furnished and certified by the Consultant, which is to be used by Consultant or Consultant in requesting progress payments.
- 1.5. **Architect:** A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a general Consultant who provides architectural services under a design-build contract authorized by F.S. 481.299(3).
- 1.6. **Architect/Engineer:** The design professional identified in the contract documents and who is licensed and registered in the State of Florida. The terms "Architect" and "Architect/Engineer (A/E)" means the architect/engineer or its authorized representative.
- 1.7. **Basic Contract:** This Contract between the County and the Consultant covering the services requested from a formal solicitation.
- 1.8. **Bid Documents:** The official forms on which the County requires formal bids to be prepared and submitted by the bidder.
- 1.9. **Calendar day:** Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions.
- 1.10. **Compensation:** The amount paid by the County to Consultant for professional 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 this Contract which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Scope of Work.
- 1.11. **Completion Date:** The date that the County or its designated representative approves and accepts all Work or Services for a Scope of Work or this Contract.
- 1.12. **Consultant:** The person or entity qualified to perform work under this Contract. In addition, Consultant must be a professional Engineer or Engineering firm, including an Architect (or registered Landscape Architect, Surveyor and Mapper, professional Engineer, Architect or registered Landscape Architect providing professional services within the meaning of Section 287.055, F.S., who is registered in the State of Florida. In addition, the Consultant may be the Engineer or Architect or Landscape Architect of record or may provide services through and be subcontracted to the Engineer of record.
- 1.13. **Continuing contract:** A contract for professional services entered into in accordance with all the procedures of Section 287.055, F.S. between the County and a firm whereby the firm provides professional services to the County for projects for work of a specified nature as outlined in this Contract as required by the County, with no time limitation except one governed by the termination provisions of this Contract.
- 1.14. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

- 1.15. **Contract Documents:** Contract documents shall include but are not limited to the following:
- (1) This Contract ("Basic Contract");
 - (2) Exhibits;
 - (3) Any valid modifications or Amendments to this Contract issued after its execution of this Contract, and any Amendments to the foregoing;
 - (5) Certificates of insurance;
 - (6) Notice of Award and/or Notice to Proceed;
 - (7) The conditions of this Contract (general, special, supplementary, and other);
 - (8) Drawings;
 - (9) Project specifications;
 - (10) Written interpretations;
 - (11) Project manuals; and
 - (12) Addenda (including RSQs, RFPs and Consultant's responses to RFPs) issued before the execution of this Contract.
- 1.16. **County:** Shall mean the County of Volusia (a body corporate and politic and a subdivision of the State of Florida).
- 1.17. **County Representative:** Also known as the Owner's representative who is the County Engineer or person designated by the County to review, approve and make decisions regarding the scope of work.
- 1.18. **Deliverable:** The result(s) or end products or services of a Project that meet the defined design or construction specifications, warranties, and functional parameters articulated in the Scope of Work for this Contract which, e.g., include but are not limited to: design drawings/specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.
- 1.19. **Drawings/Plans:** The official approved drawings or plans or exact reproductions thereof, which have been prepared, signed, sealed and dated by the Consultant, which shows the location, character, dimensions and details of the work to be done and which are considered part of the Contract Documents.
- 1.20. **Effective Date:** The date that this Contract, Addendum, Amendment, Modification is fully executed by Consultant and the County.
- 1.21. **Engineer:** The person, firm, or corporation named as such in the contract and/or authorized by the County to act as the County's representative or the County construction Engineer authorized to practice Engineering services pursuant to Florida Statute 471.03(2)(i)(as amended) and who may serve as the County's Engineers of construction, Engineering and inspection. The term Engineer shall be synonymous with design Architect/Engineer or Architect/Engineer or Consultant.
- 1.22. **Engineer of Record:** The professional Engineer or engineering firm contracted or employed by the County and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The Engineer of record may be County in-house staff or a consultant retained by the County.
- 1.23. **Field Order:** A written instrument issued by the Consultant to the Consultant, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.
- 1.24. **Final Certificate of Payment:** A certificate for payment which shall constitute a representation of

the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Consultant(s) periodic waiver of liens and "no lien affidavits" at each payment.

- 1.25. **Final Completion:** That date when (a) the Work is complete in accordance with the Contract Documents including the minor items identified during the final inspection, and (b) the Consultant has submitted its request for final payment including the Consultant's release and all Subconsultant affidavits.
- 1.26. **Firm:** Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice Architecture, Engineering, or Surveying and Mapping in the state.
- 1.27. **Inspector or Field Representative:** County Employee or an authorized representative of the Consultant assigned to make inspections of the work performed and materials furnished by the Consultant.
- 1.28. **Landscape Architect:** A person or firm that is authorized to practice landscape architecture pursuant to Florida Statute 481.311.
- 1.29. **Modification:** A written Amendment to the Contract Documents approved by the County which includes but is not limited to the following:
 - 1.29.1. **Field Order:** A written clarification, interpretation, minor change or alteration issued by the Consultant.
 - 1.29.2. **Addenda:** A document written by the Consultant and approved by the County that is added to the original Contract Documents to clarify, revise, add to, or delete from the original Contract Documents or previous addenda. The document includes a written clarification or interpretation prepared by the Consultant.
- 1.30. **Notice of Award:** A written notice by County that the Consultant has been determined by an evaluation committee and the County Council to be highly qualified and approved for an award of a contract.
- 1.31. **Notice to Proceed:** The official letter from the County to the Consultant establishing a date on which the Work will commence.
- 1.32. **Original Expiration Date:** The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.
- 1.33. **Owner:** The owner is Volusia County for whom all Work or Services under this Contract are performed by the Consultant.
- 1.34. **Professional Services:** Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any Architect, professional Engineer, Landscape Architect, or registered Surveyor and Mapper in connection with his or her professional employment or practice.
- 1.35. **Project:** The Services or Work to be performed pursuant to a scope of services.
- 1.36. **Project Manager or County Project Manager:** The County employee who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the County. The County may change the Project Manager at any time by providing notice to the

Consultant or Consultant.

- 1.37. **Proposal:** The document submitted by the Consultant in response to a formal solicitation used to determine if the Consultant is highly qualified.
- 1.38. **Request for Statement of Qualifications (RSQ):** An invitation process initiated and used by the County to select Consultant(s) or consultant(s) to perform work or provide services in a prospective project(s) based upon their apparent qualifications as submitted by them (respondents) in response to the invitation.
- 1.39. **Scope of Services/Work:** The general services/work, herein defined in this Contract including responsibility for performing and complying with all incidental matters pertaining thereto.
- 1.40. **Services:** Those services are the professional services of work or tasks as defined in Section 287.055, F.S. to be performed by the Consultant as provided for under this Contract which shall be performed by a duly licensed professional Engineer or Engineering firm, Architect or Architectural firm, Landscape Architect or Landscape Architectural firm, Surveyor, and/or Mapper who is registered in the State of Florida.
- 1.41. **Shop Drawings:** All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Consultant, subconsultant, manufacturer, supplier, distributor, or other person on behalf of the Consultant, and which illustrate the equipment, material, or some portion of the work.
- 1.42. **Specifications:** The document that establishes the material and performance requirements of goods and services.
- 1.43. **State:** State of Florida.
- 1.44. **Subconsultant:** A person other than a materialman or laborer who enters into a contract with a Consultant for the performance of any part of the basic Contract.
- 1.45. **Sub-subconsultant:** A person other than a materialman or laborer who enters into a contract with a Subconsultant for the performance of any part of such Subconsultant's contract.
- 1.46. **Substantial Completion:** The date as certified by the County's Project Manager when the Project or a specified part as agreed to in writing by the parties is sufficiently completed to the satisfaction of County or its designated representative, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due.
- 1.47. **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 Documents, including the furnishing of all labor, materials, equipment and other incident.

2. ORDER OF PRECEDENCE.

- 2.1. If Consultant finds a conflict, error, or discrepancy in the Contract Documents, it shall call it to the County Project Manager's attention, in writing, and request the County Project Manager's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the Consultant to the County Project Manager in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in the following order:

2.1.1 Modifications (i.e., amendments or field orders) to the Contract

- 2.1.2 This Contract between the County and Consultant
- 2.1.3 Addenda or Exhibits to this Contract
- 2.1.4 Scope of Work
- 2.1.5 Other Documents, exhibits, and attachments

3. SCOPE OF WORK.

- 3.1. **General Scope of Services.** The following general Scope of Services shall be governed by Section 3.2 of this Contract. The Consultant shall provide services under this Contract in accordance with the Scope of Services set forth in **Attachment "A"**.
- 3.2. **Performance Criteria:**
- 3.2.1. All Work or Services shall be performed in accordance with the Contract Documents.
 - 3.2.2. All labor necessary to complete the Scope of Work shall be performed in a good and competent workmanlike manner to the satisfaction of the County.
 - 3.2.3. 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. Nothing herein shall create any association, partnership, joint venture or agency relationship between them. The County shall not provide vehicles or equipment to the Consultant to perform the duties required under this Contract nor will 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 of this Contract. 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 under this Contract.
 - 3.2.4. The County may at any time, by written order, make changes within the general scope of work and/or Services to be performed under this Contract. Except as provided in this Contract otherwise, if any such change causes an increase or decrease in the Consultant's cost of, or the time required for performance of Work or Services, an equitable adjustment shall be made and this Contract shall be amended in writing stating the equitable adjustment. Any claim by the Consultant for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change unless the County grants in writing an additional period of time before the completion of the Contract; otherwise, the claim shall be deemed waived and the Consultant shall proceed with the prosecution of the Work or Service as changed. Except as otherwise provided in this Contract, no charge for any extra work shall be allowed or approved by the County.
 - 3.2.4.1. **Changes to Scope of Work.** Either party may propose changes to the scope or time schedule of the Work or Services under this Contract which shall be submitted to the other party in writing for consideration of feasibility and the likely effect on the cost and schedule for performance of the Work or Services. The parties shall mutually agree in writing upon any proposed changes, including resulting equitable adjustments to costs and schedules for the performance of the Work or Services. The agreed changes shall be documented in one (1) or more Amendments to this Contract prior to the Commencement of any Work resulting from the changes. If despite good faith negotiations the parties are

unable to agree to the terms of an amendment to this Contract, the parties shall follow the dispute resolution process provided under Section 18.

- 3.2.5. **Time is of the Essence.** Time is of the essence for all work performed under this Contract performed in accordance herewith.
- 3.2.6. For each purpose related to this Contract, Consultant's Subconsultants or Sub-Subconsultants shall be independent consultants with respect to the County and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
- 3.2.7. County and Consultant shall exhaust all methods to resolve issues, including but not limited to, the Dispute Resolution procedures in Section 18 of this Contract before any action is taken to declare the County or Consultant in default of this Contract.

4. TERM OF CONTRACT.

- 4.1. Subject to Section 4.2, the Term of this Contract shall commence on the Effective Date of this Contract or when it is fully executed by all parties and **shall terminate two (2) years from the Effective Date or upon project completion, whichever occurs later.** This Contract may be renewed by the County if the County determines that renewal is in the best interest of the County and satisfies the requirements of Section 287.055, F.S. (as amended). Said renewal shall be in writing and made a part of this Contract and shall incorporate this Contract by reference.
- 4.2. The Work or Services to be rendered by the Consultant shall be completed within the time specified therein.

5. CONTRACT PRICE AND COMPENSATION.

- 5.1. In consideration of the performance of this Contract by the Consultant, the County agrees to pay the Consultant in current funds, as compensation for its services in the not to exceed amount of **[Amount in word] DOLLARS AND XX/100 (\$).**
 - 5.1.1. The Consultant shall be paid Compensation for all Work or Services, including labor and materials, performed under this Contract.
 - 5.1.2. Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project costs which result in an increase in the cost of this Contract or because the time for completion varies from the original estimate, including completion or substantial completion of this Contract prior to the scheduled or Contract completion date or on account of County's election to furnish any of the Work or Services. In addition, Consultant shall certify that the original contract price or Compensation for a Project and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
 - 5.1.3. **Reimbursable Expenses.**
 - 5.1.3.1. Subject to the County's Travel and Reimbursement Policy, Sections 112.061 (7) and (8), Florida Statutes, or their successor, reimbursable expenses include actual and verifiable expenditures without any mark-up made by the Consultant or Consultant's employees and/or agents that directly relate to the Project and to the expenses listed in the following subparagraphs:

- 5.1.3.1.1. Expenses of transportation, when traveling is directly related to the Project and necessary, based on and in accordance with the Scope of Work;
 - 5.1.3.1.2. Long distance calls and telegrams;
 - 5.1.3.1.3. Fees paid for securing approval of authorities having jurisdiction over the tasks of the Project;
 - 5.1.3.1.4. Expenses of reproductions;
 - 5.1.3.1.5. Postage and handling of drawings and specifications;
 - 5.1.3.1.6. Any other expenses related to the Project; and
 - 5.1.3.1.7. If authorized by the County, the cost of other expenditures made by the Consultant that relate directly to the Scope of Work.
- 5.1.4. **Truth-in-Negotiation Certificate.** For any fixed fee/lump-sum, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract over \$150,000.00, Consultant shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price or Compensation and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or Compensation adjustments must be made within one (1) year following the end of the contract. Otherwise, such adjustments shall be deemed waived by the Consultant and null and void for the purposes of this Contract. The signature on this Contract by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
- 5.1.5. **Fixed Fee or Price and Guaranteed Maximum-Not-To-Exceed Compensation.** The total fixed fee, price or and Guaranteed Maximum-Not-To-Exceed Compensation for a Project shall be comprised of the total cost of the project, including all design engineering, materials, machinery, equipment, labor, all expenses and costs, temporary construction, capital spare parts, reimbursable expenses, all mark-ups for overhead and profit.
- 5.1.6. **Retainage.** The County shall not withhold retainage from Compensation paid to a Consultant.
- 5.1.7. **Payments.**
- 5.1.7.1. **Punch List.** If County in its reasonable discretion does not consider a Project substantially complete, the County shall notify Consultant in writing giving the reasons. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall state the time within which those items shall be completed or corrected, the time to be within the contract time. Disputes regarding payments shall be resolved through the dispute resolution procedure articulated in Section 18 of this Contract.
 - 5.1.7.2. **Approval of Payment.** If, on the basis of the County Project Manager's

observation and review of Consultant's Work or Services for a Project and, the County Project Manager's satisfaction that the work has been completed and Consultant has fulfilled all of its obligations under the Contract Documents, County Project Manager, after receipt of the Project invoice, shall indicate in writing his or her approval of payment and present the invoice to Accounts Payable for payment. Otherwise, the County Project Manager shall return the invoice to the Consultant, indicating in writing the reasons for refusing to approve final payment, in which case the Consultant will make the necessary corrections and resubmit the invoice.

- 5.1.7.3 **Invoice Detail.** Regardless of the method of compensation, e.g., "fixed fee", "time and materials," or "guaranteed maximum no-to-exceed" basis, the Consultant shall submit an invoice for which professional services were rendered to the County in response to its request therefore upon the completion and acceptance of the services detailed in Exhibit "B." Each invoice shall show detailed explanations of the services accomplished by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the prices set forth in this Contract. All of the above shall sum to the total amount requested.
- 5.1.8. **Invoices.** Invoices or payment requests shall be addressed by Consultant and submitted to the County's Project Manager. The Consultant shall submit:
- A. ☒ A monthly statement for professional services rendered to the date of the statement. The monthly statements shall reflect the Work or Services actually completed at the time of billing.
 - B. ☐ A Final Statement for the Project indicating the Work or Services actually completed after final acceptance of said Work or Services by the County. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) business days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.
- 5.1.9. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.
- 5.1.10. The County may withhold payment of any specific invoiced charges in a pay request or monthly statement which it disputes in good faith and pay all undisputed charges on the invoice, pay request or monthly statement.
- 5.1.11. Within forty-five (45) days of acceptance by the County Project Manager of all the Work or Services for which Consultant has submitted the monthly statement of professional services, the Consultant shall be paid the unpaid balance of any money due for any undisputed Work or Services covered by said statement. All payments shall be governed by the Florida Prompt Act as set forth in the Florida Statute § 218.70 (as amended).
- 5.1.12. **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment

of taxes for work or services performed under this Contract.

5.1.13. **Consultant's Continuing Obligations.** Consultant's obligation to perform the Work or services in accordance with the Contract Documents shall be absolute. Neither approval of any progress nor final payment to Consultant, nor the issuance of a certificate of substantial completion, nor any payment by County to Consultant under the Contract Documents nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Work or Services not in accordance with the Contract Documents.

5.2. **Payment of Consultant's Subconsultants or Sub-Subconsultants.** Consultant shall save and hold the County harmless from any and all claims or actions by Consultant's Subconsultants or Sub-Subconsultants for payment of monies such Subconsultant or Sub-Subconsultant claims to be owed by Consultant for Work performed under this Contract.

5.3. Nothing in this Contract shall create any obligation on the part of the County to pay directly to any Subconsultants of Consultant any monies due to such Subconsultant claims of a Subconsultant for amounts owed by Consultant to Subconsultant for Work performed under this Contract.

6. TERMINATION.

6.1. The performance of Work or Services under this Contract may be terminated by the County in accordance with this clause in whole or from time to time in part, upon at least thirty (30) days prior written notice to Consultant whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be affected by delivery to the Consultant of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the subsequent date upon which such termination becomes effective.

6.2. **Non-Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the County due to non-appropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Consultant under this Contract beyond the date of termination except as set forth in this Contract. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues.

6.3. Upon receipt of such notification, Consultant shall inform County of the extent to which performance is completed and unless notified in writing by the County otherwise, the Consultant shall take no further steps towards completion of the Project. Upon payment by County, Consultant shall deliver to County any and all completed Deliverables and Deliverables-in-progress that then exist for the Project. If the County terminates the Project due to the Consultant's failure to meet a completion deadline as set forth in this Contract, the County may seek the services for the Project from another consultant. Payment will be made to the Consultant pursuant to 6.4.15.

6.4. After receipt of a Notice of Termination as set forth in Section 6.1 above, and except as otherwise directed by the County, the Consultant shall:

6.4.1. Stop work under this Contract on the date and to the extent specified in the Notice of Termination.

6.4.2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under this Contract, as it is not terminated.

- 6.4.3. Terminate all orders and subcontracts pursuant to this Section 6 to the extent that they relate to the performance of Work or Services terminated by the Notice of Termination.
- 6.4.4. Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 6.4.5. With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of a termination under Section 6. In addition, Consultant shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:
 - 6.4.5.1. The sketches, calculations, reports, models, studies and other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the Notice of Termination; and,
 - 6.4.5.2. The completed or partially completed designs, plans, drawings, information, and other property, which, if the Contract has been completed, would have been required to be furnished to the County.
- 6.4.6. Consultant shall complete performance of such part of the Work or Services as shall not have been terminated by the Notice of Termination.
- 6.4.7. After receipt of a Notice of Termination, the Consultant shall submit to the County its termination claim, in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one (1) or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such thirty (30) day 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 there upon pay to the Consultant the amount so determined.
- 6.4.8. Subject to the provisions of Section 6.4.7., the Consultant and the County may agree upon the whole or any part of the amount or amounts to be paid to the Consultant by reason of the total or partial termination of work pursuant to Section 6 which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price or Compensation as reduced by the amount of payments otherwise made and as further reduced by the contract price of Compensation for Work not terminated. As such, the Contract shall be amended accordingly and the Consultant shall be paid the agreed amount. Nothing herein, prescribing the amount to be paid to the Consultant in the event of failure of the Consultant and the County to agree upon the whole amount to be paid to the Consultant by reason of the termination of Work or Services pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Consultant.
- 6.4.9. In the event of the failure of the Consultant and the County to agree as provided in Section 6.4.8. above upon the whole amount to be paid to the Consultant by reason of the termination of work pursuant to Section 6, the County shall pay to the Consultant the amounts determined by the County as follows, but without duplication of any amounts

already agreed upon by the parties.

6.4.9.1. For completed Work or Services accepted by the County, the price or prices or Compensation specified in the Contract for such work, less any payments previously made.

6.4.9.1.1. Notwithstanding section 5.1.4., the total compensation shall include the total of the following:

6.4.9.1.1.1. The costs incurred by the Consultant in the performance of the Work and Services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the Work and Services paid or to be paid for under Sections 6.4.8., and 6.4.9.1., hereof;

6.4.9.1.1.2. The cost of settling and paying claims arising out of the termination of Work or Services under subcontracts or orders as provided herein, which are properly chargeable to the terminated portion of the Contract exclusive of amounts paid or payable on account of work or services delivered or furnished by Subconsultants or Sub-Subconsultants prior to the effective date of termination, which amounts shall be included in the costs payable herein.

6.4.10. This Contract may be terminated by the Consultant if the Consultant provides a minimum of thirty (30) days written notice to the County's Director of Purchasing and Contracts. In the event the Consultant breaches any of the terms and conditions of this Contract and after receipt of notice from the County of said breach and time to cure the same the Consultant fails to cure the breach, the County may take over the Work and Services and complete the Work or Services; or otherwise, the Consultant shall be liable to the County for any increased cost of the Project reasonably incurred by the County in the process of completing the Consultant's unfinished Work and Services. As such, County may apply unpaid Compensation due and owing to the Consultant prior to the default as a set off against the costs incurred by the County for taking over such Work or Services.

6.4.11. In the event that there is a partial termination of this Contract by the County or Consultant because of non-appropriation by County, subject to Section 4 - Term of Contract and Section 5 - Contract Price and Compensation, Consultant shall be paid in accordance with terms of this Section 6, to the date of termination on a prorated basis for any task, milestone, or Deliverable started but not completed which were designated for payment on a payment schedule provided to the County prior to the commencement of work on the task, milestone or Deliverable which is the subject of the partial termination. 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 and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5-Contract Price and Compensation. Consultant and County shall be obligated to continue performance under this Contract for the work or services within the Scope of Work or Services under this Contract which is not the subject of the partial termination by non-appropriation.

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

- 6.4.12.1. The County shall continue to have the unfettered right to use or access any license, designs, plans, or exhibits, any of the Deliverables or work products from tasks or milestones, arising under that Contract and produced pursuant to the Contract Documents for which the County has paid prior to termination of this Contract or for which County makes payment after termination of this Contract.
- 6.4.13. Except as otherwise provided in this Contract, Consultant shall return to the County all County Confidential Information in Consultant's possession and Consultant shall certify in a written document signed by the Consultant that all such information has been returned.
- 6.4.14. Except as provided in Section 6.4.12.1., the County shall return to Consultant or destroy all Consultant's Confidential Information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Consultant's Confidential Information and all copies of any of the foregoing (in whatever medium recorded)) and all Third-Party Products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager that all such information and material has been returned or destroyed.
- 6.4.15. For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 4 - Term of Contract, Section 5 - Contract Price and Compensation, and this Section 6, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of invoice. Consultant shall invoice the County for any sums Contactor 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 and County shall pay any undisputed amount within thirty (30) days.
- 6.4.16. 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 thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.
- 6.4.17. All provisions of this Contract which imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Contract.

7. RESPONSIBILITY OF CONSULTANT.

- 7.1. Consultant shall be a duly licensed under the laws of the State of Florida as an architect, engineer, landscape architect, mapper or surveyor for the purposes of this Contract and to satisfy the requirements of Section 287.055, F.S. (as amended).
- 7.2. Consistent with Section 7.3 below, Consultant's performance of Work or Services shall be in accordance with the terms and conditions of this Contract. The Consultant's performance of Work or Services shall be as a professional consultant to the County to carry out the activities of the Scope of Work or Services under the direction of the County's Project Manager.

- 7.3. Consultant shall perform Work or Services required under this Contract, including but not limited to reports, studies, schedules, estimates or other documentation pertaining to a Project. Consultant shall confer with the Project Manager to ascertain the functional or design criteria of the scope of work. The services of the Consultant shall also include of the following:
- 7.3.1. Consultant shall certify to the County in all reports submitted that all reports, studies, schedules, estimates and other required documents therewith conform to the Scope of Work or Services in this Contract and applicable governmental regulations, statutes, and ordinances, including any amendments thereto. Said certification shall be in the form acceptable to the County; and, made a part of this Contract and incorporated herein by reference.
 - 7.3.2. Consultant covenants and agrees that there are no obligations, commitments, or impediments of any kind that shall limit or prevent Consultant's performance of the Work or Services.
 - 7.3.3. The Consultant covenants and agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the County.
 - 7.3.4. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant shall be in accordance with the most current specifications or technology at the time this Contract is fully executed and as of the time Consultant delivers to County the specifications and/or Deliverables. Thereafter, Consultant shall keep the County informed of any changes or advancements in such specifications or technology occurring any time prior to or during actual implementation of the Project.
 - 7.3.5. Consultant covenants and agrees as follows:
 - 7.3.5.1. That Consultant recognizes that its special talent, training, and experience caused the County to select Consultant to be the prime professional on the Project;
 - 7.3.5.2. That Consultant comprehends the specifications and requirements of the Scope of Work or Services and the use of the same in their entirety to provide Project Deliverables;
 - 7.3.5.3. That Consultant possesses the special skills to recognize material errors or omissions that shall make a Deliverable fail to perform within the specifications and requirements of the Scope of Work;
 - 7.3.5.4. That Consultant shall adhere to the standard of care applicable to a consultant with the degree of skills and diligence normally employed by a licensed professional in his field or practice performing the same or similar services or Work in compliance with all applicable federal, state, and municipal laws, regulations, codes, and ordinances.
 - 7.3.6. Consultant covenants and agrees that any Project data, reports, studies, designs, drawings, specifications and requirements prepared by Consultant or its agents or sub consultants shall be completed in a competent and workmanlike manner. In addition, Consultant shall include in any such reports, studies, bulletins, schedules, designs, drawings, and/or specifications warnings about known hazards to the Project.

- 7.3.7. Consultant covenants and agrees to the following: (1) the Project plans and specifications shall conform to their foreseeable use in the Project with all the amenities as set forth in the plans and specifications; and, (2) the Consultant shall produce Deliverables made in a competent and workmanlike manner. Consultant's duties as set forth herein shall at no time be in any way diminished by reason of any approval by County of any plans or specifications nor shall Consultant be released from any liability by reason of such approval by County, it being understood that County at all times is ultimately relying on Consultant's skill, expertise, and knowledge in preparing the plans and specifications or any other documentation. As such, said approval shall not be a defense to a claim or cause of action for contribution or indemnification by the County.
- 7.3.8. Consultant covenants and agrees that all persons connected with Consultant directly in charge of the professional work are duly registered and licensed under Florida law and pursuant to this Contract.
- 7.3.9. Consultant covenants and agrees that it shall be liable for all negligent acts, errors, or omissions proximately caused by Consultant, if any, in judgment relative to the Work or Services under which Consultant provides Work or Services.
- 7.3.10. Consultant covenants and agrees to call to County's attention anything of any nature in any reports, studies, bulletins, schedules, designs, drawings, documentation, plants, specifications, requirements or instructions prepared by Consultant or data supplied to Consultant by the County or any other party that Consultant regards in Consultant's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished in the Project.
- 7.3.11. Consultant covenants and agrees to furnish efficient business administration of the Project and perform all Work or Services in the most expeditious and economical manner consistent with the standard of care articulated in Section 7.3.5.4.
- 7.3.12. Consultant covenants and agrees that it shall, at its own cost, make good any defects in its Work or Services as soon as Consultant becomes aware of such defects or is notified of such defects. Should Consultant refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then County, pursuant to Section 6 - Termination, shall be entitled to make good such defective Services at the expense of Consultant or terminate this Contract. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective Work or Services that County may have at law or in equity.
- 7.3.13. Consultant covenants and agrees to provide all necessary and required plans for the successful design or completion of the Project as agreed to in the Scope of Work and as governed by this Contract. Written Deliverables shall be made and delivered in accordance with this Contract. Each Written Deliverable shall be accurate, legible, and suitable for public bidding purposes. For recommendations concerning the plan preparation of studies, plants, or specifications, the Consultant should refer to the latest applicable manuals as determined by the Project Manager. All studies, plans, drawings or specifications must meet the County's requirements to obtain permits or government documents, licenses, and certificates as applicable for the Project. In addition the Consultant shall have the following responsibilities:
 - 7.3.13.1. Consultant shall be responsible for preliminary coordination with the County and other appropriate regulatory agencies so that design efforts are properly directed towards permit approval.
 - 7.3.13.2. If applicable, Consultant shall prepare permit packages based on preliminary

- coordination with the County and other appropriate regulatory agency's requirements at the time of submittal. The permit packages shall include site and system design information required by the County and other regulatory agencies, applicable sketches and calculations.
- 7.3.13.3. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information. The Consultant shall report to the County any requests for information not required at the time of permit submittal, as made known during preliminary coordination, reproductions in excess of requirements, or regulation changes requiring permit resubmission.
 - 7.3.13.4. Consultant shall review all design and shop drawings and other data that the Consultant is required to submit to the County or any state, local or federal agency. These drawings shall be reviewed for general conformance with the design concept of the Project, scope of work and general compliance with the information given in the Contract Documents.
 - 7.3.13.5. Consultant shall make a final review of Project Deliverables to determine if Work or Services were completed in general conformance with the Contract Documents.
 - 7.3.13.6. Consultant shall prepare and submit a schedule or time line of the Project.
- 7.3.14. The County shall not pay an additional fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that were the responsibility of the Consultant and that are not attributable to changes in rules made by the regulatory agency since submission of the original permit package.
- 7.3.15. **Annual Statement of Qualifications.** Annually, the Consultant shall submit to the County's Contracts Administrator statements of qualifications and performance data confirming that Consultant is a duly licensed and registered professional architect, engineer, landscape architect, or surveyor and mapper as applicable in connection with Consultant's professional practice and the Services or Work provided to the County under this Contract.
- 7.3.16. **Design Phase.** As required by the County, Consultant shall submit a certain number of sets of design development documents and/or estimates to the County for review. The plans and specifications shall be of sufficient detail indicating, e.g., floor plan layout, elevations, outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, site work, and such other work as may be necessary for the Consultant's delivery of a completely functioning Project or completed design drawings and specification. As requested by the County Project Manager, the Consultant shall submit a unit cost or opinion of cost estimate for this phase of the Work or Services for review and approval of County. This estimate or opinion shall include, e.g., identification of costs for heating, ventilation, plumbing, air conditioning, and electrical lighting and power, and other items applicable to the Project.
- 7.3.17. **Final Review of Plans, Specifications, and Estimates.**
- 7.3.17.1. As requested by the County, Consultant shall submit to County for review copies of the Project plans and specifications, and copies of the latest detailed cost estimate.

- 7.3.17.2. Upon completion and final approval by County of the Project plans, specifications, other contract documents, and cost estimates, Consultant shall deliver to County as part of the contract obligation, unless otherwise noted completed plans, designs, drawings, specifications, documents, and cost or opinion estimates.
- 7.3.17.3. Consultant shall submit to County original drawings and specifications that shall reflect all amendments to the Contract Documents.
- 7.3.17.4. Consultant shall furnish all services, materials, labor, and all other items required to undertake and complete all Work or Services required by this Contract in accordance with the drawings, plans, and specifications submitted to the County by Consultant or relied upon by the Consultant to complete the Project.
- 7.4. **Assurance.** Consultant gives County its assurance that all Work or Services performed under this Contract shall be timely performed in a competent and workmanlike manner and in accordance with the specifications and requirements of the Contract Documents and of any inspections (if applicable), tests (if applicable) or approvals required under the Contract Documents. All Work not conforming to the specifications and requirements of the Scope of Work or of the inspections, tests (if applicable) shall be considered materially defective and constitute a breach of this Contract.
- 7.5. **Tests and Inspections.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected and tested, and Consultant has agreed to perform such services, Consultant shall furnish the County's Project Manager with the required certificates of inspection, testing or approval. All tests shall be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization that may be required by law or the Contract Documents.
- 7.6. The Consultant shall be responsible for the professional and technical accuracy and the coordination of all data, reports and any other service furnished by the Consultant under this Contract. The Consultant shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work or Service for which it is responsible.
- 7.7. All Work performed by Consultant including all general provisions, special provisions, job specifications, drawings, addendum, amendments to the basic Contract, written interpretations, and written orders for minor changes in Work, shall comply with the Scope of Work and all applicable local laws, codes, ordinances and statutes and the performance criteria of section 3.2. Otherwise, if Consultant is an architect or engineer, only work certified by said consultant, which in whole or part constitutes, a Deliverable shall comply with the Scope of Work and all applicable local laws, codes, ordinances and statutes. Work not covered by Contract Documents shall not be required in the Project unless the County in its sole discretion determines that it is required by reasonable inference as being necessary to produce the intended Deliverable(s).
- 7.8. Pursuant to the Contract Documents, Consultant shall supervise and direct all Work or Services efficiently and with its best skill and in a competent and workmanlike manner. As such, Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures for the design or development of a Deliverable. Further, Consultant shall be responsible for assuring the County that finished Deliverables complies accurately with the Contract Documents or plans and specifications of the Scope of Work.
- 7.9. Consultant shall make periodic visits as delineated in the Scope of Work or Services to the site to observe the progress and quality of the executed construction Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The efforts of the Consultant shall be directed toward providing assurance for the County that all Work completed shall conform to the requirements of the Scope of Work or Services. On the basis of Consultant's observations, skills and experience, Consultant shall keep the County informed of the progress of all Work and

shall endeavor to guard the County against defects and deficiencies in the Work. As required, each site visit will be followed by a report to the County of known deviations from the Contract Documents or plans and specifications in the Scope of Work.

7.10. Concerning Subconsultants.

- 7.10.1. Consultant shall not employ any Subconsultant other person or organization of against whom the County may have reasonable objection, nor shall Consultant be required to employ any Subconsultant against whom it has reasonable objection. Consultant shall not make any substitution for any Subconsultant who has been accepted by the County without the County's approval.
- 7.10.2. County's disapproval or requirement of removal or replacement of Consultant 's employee or Subconsultant shall be deemed for lawful reasons if in County's reasonable judgment, such Consultant's employee or Subconsultant poses a threat or causes harm to the health, welfare, or safety, or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Contract, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under conditions other than honorable under other than honorable conditions from any of the Armed Forces of the United States.
- 7.10.3. Consultant shall be fully responsible for all negligent acts and omissions of its Subconsultant or Sub-Subconsultant and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any Subconsultant or Sub-Subconsultant and the County or any obligation on the part of the County to pay or to see to the payment of any moneys due any Subconsultant or Sub-Subconsultant, except as may otherwise be required by law. County may furnish to any Subconsultant or Sub-Subconsultant to the extent practicable, evidence of amounts paid to Consultant on account of specific work done in accordance with the schedule of values.
- 7.10.4. Consultant agrees to bind specifically every Subconsultant to the applicable terms and conditions of the Contract Documents and the terms and conditions of Sections 1-3, and 16 of this Contract for the benefit of the County.
- 7.10.5. The Consultant shall require all Subconsultants or Sub-Subconsultants or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the County and the Consultant.
- 7.10.6. Any Subconsultants or Sub-Subconsultants and/or outside associates required by the Consultant in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified for the Project assigned under this Contract. Any substitution of such, Subconsultants, Sub-Subconsultants or associates will be subject to the prior written approval of the County Project Manager.

8. AUTHORIZATION FOR SERVICES.

- 8.1. **No Guarantee to Perform Projects.** The County makes no covenant or promise as to the number of available Projects, nor that the Consultant will perform any Project for the County during the life of this Contract. The County reserves the right to contract with other parties for the services contemplated by this Contract as determined in the County's sole and absolute discretion.

- 8.2. **Certifications for Completed Work.** Consultant shall sign and seal (hereinafter "Certification") all completed Work under this Contract as required as a licensed professional or under Florida law; otherwise, the County Project Manager shall not have the authority to approve completed Work or Services and Consultant shall not be entitled to payment for the Work or Services covered by uncertified Work. In the event the County Project Manager accepts and approves completed Work bearing no such certification by the Consultant, such acceptance and approval shall not relieve Consultant or its Subconsultants or Sub-Subconsultants or agents of any liability for any defects, omissions or errors in the Deliverables of completed Work until such work is certified by Consultant.

9. INDEMNIFICATION.

- 9.1. **Indemnification.** To the extent permitted by law, Consultant shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Consultant and other persons employed or utilized by the Consultant in the performance of the Contract.

- 9.1.1 In all claims against County, Consultant's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Consultant, or its employees, agents, Consultants, or subconsultants.

9.1.2 IN ACCORDANCE WITH FL STATUTE 558.0035:

(1) A DESIGN PROFESSIONAL EMPLOYED BY A BUSINESS ENTITY OR AN AGENT OF THE BUSINESS ENTITY IS NOT INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF A PROFESSIONAL SERVICES CONTRACT IF:

(A) THE CONTRACT IS MADE BETWEEN THE BUSINESS ENTITY AND A CLAIMANT OR WITH ANOTHER ENTITY FOR THE PROVISION OF PROFESSIONAL SERVICES TO THE CLAIMANT;

(B) THE CONTRACT DOES NOT NAME AS A PARTY TO THE CONTRACT THE INDIVIDUAL EMPLOYEE OR AGENT WHO WILL PERFORM THE PROFESSIONAL SERVICES;

(C) THE BUSINESS ENTITY MAINTAINS ANY PROFESSIONAL LIABILITY INSURANCE REQUIRED UNDER THE CONTRACT; AND

(D) ANY DAMAGES ARE SOLELY ECONOMIC IN NATURE AND THE DAMAGES DO NOT EXTEND TO PERSONAL INJURIES OR PROPERTY NOT SUBJECT TO THE CONTRACT.

(2) AS USED IN THIS SECTION, THE TERM "BUSINESS ENTITY" MEANS ANY CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP, PROPRIETORSHIP, FIRM, ENTERPRISE, FRANCHISE, ASSOCIATION, SELF-EMPLOYED INDIVIDUAL, OR TRUST, WHETHER FICTITIOUSLY NAMED OR NOT, DOING BUSINESS IN THIS STATE.

- 9.2. **Confidential Information and Indemnification.** If Consultant is licensing or developing software (including derivative works) for use by the County, Consultant grants County a perpetual, fully-paid, non-assignable, non-exclusive, royalty-free license to use Consultant's software deliverables developed or licensed under a Task Assignment. Said license includes software owned by Consultant which is furnished under this Contract or a Task Assignment, for County's internal use with such use to include the right to modify such deliverable(s) and to create derivative works for such internal use including, without limitation, the right to use such deliverable(s).
- 9.3. Confidential Information and/or Trade Secret do not include the following:
- 9.3.1. Information already known or independently developed the party in possession; or
 - 9.3.2. Information in the public domain through no wrongful act of the party in possession; or
 - 9.3.3. Information received by the party in possession from a third party who was free to disclose it; or
 - 9.3.4. Information regularly disclosed to third parties without restriction on disclosure, or
 - 9.3.5. Information required to be disclosed by law or an order of a court of competent jurisdiction.
- 9.4. If Consultant is licensing, providing or developing software, including derivative works for use by the County, Consultant agrees to protect and indemnify and hold harmless the County, its agents, elected officials and employees of the County from and against any and all claims, demands, actions, and causes of action which may arise asserting that all or any part of the Consultant licensed applications provided under any software owned by Consultant and licensed to County or provided by Consultant for use thereof by the County, infringes or misappropriates any third party's United States patent, copyright or any trade secret protected under United States law.
- 9.4.1. In addition to the foregoing indemnification provision, Consultant shall also take the following steps to assure that County can continually use the software which Consultant

has directly licensed to County or provided for use thereof by the County in substantially the same manner delivered or subsequently enhanced or modified by:

- 9.4.1.1. Promptly replace the allegedly infringing or misappropriated item or items with compatible, functionally equivalent items which are not alleged to be infringing or misappropriated; or
 - 9.4.1.2. Promptly modify the alleged infringing or misappropriated item or items to eliminate the alleged infringement or misappropriation without impairing County's intended use of the licensed applications and/or sublicensed applications in any manner; or
 - 9.4.1.3. Promptly procure the right for the County to continue to use the licensed applications and/or sublicensed applications without modification; and
 - 9.4.1.4. Unless otherwise agreed by the parties, promptly shall mean that the events described herein shall occur in no less than sixty (60) days from the date that notice of the claim is received by Consultant unless otherwise agreed by the Parties.
- 9.5. In the event that Consultant does not enable the County to use that which Consultant has delivered through accomplishing one or more of the alternatives set forth in above within aforementioned time period set forth herein during the term of this Contract, Consultant shall be in material default of this Contract and subject to Section 6 - Termination.
- 9.6. If Consultant is granting a license or develops software for the County under this Contract, it hereby warrants and represents that:
- 9.6.1. Consultant is the sole owner of all right, title, and interest in and to the Consultant licensed software, user manuals and documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein, and that it is authorized to enter into this Contract and grant County a perpetual license; and
 - 9.6.2. No portion of any licenses or right granted to the County to use Consultant's software pursuant to the terms of the applicable software license Contract of Consultant for any work performed under this Contract violates or is protected by right, title, interest or similar right of any third person or entity.
- 9.7. **Indemnification for Grant Funded Projects.** For any agreements that are funded or may in future be funded by Federal Emergency Management Agency (FEMA) Public Assistance grants or other Federal or State grants or program, the following shall apply: *Consultant*/Consultant shall indemnify, defend and hold harmless the Florida Department of Emergency Management, its employees and/or their Consultants (FDEM) and the government of the United States, its employees and/or their Consultants (US), from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of, resulting from, or incident to Consultant's performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the FDEM, or US.
- 9.8. In all claims against FDEM or US, Consultant/Consultant's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Consultant, or its employees, agents, Consultants, or subconsultants.

10. LIMITATION OF LIABILITY.

- 10.1. **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this 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 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 this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

11. COUNTY REPRESENTATIVE.

- 11.1. The Work or Services shall be provided by the Consultant under the direction of the authorized County Representative, except as limited by the County's Purchasing and Contracts Procedures (see www.volusia.org/purchasing), who shall have decision authority subject to the requirements of the County's Purchasing Procedures Manual for all phases of the Work, including general direction, review and approval of the Work or Services.
- 11.2. Neither the County Representative's review, approval or acceptance of, nor payment for any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the County for all costs of any kind which were incurred by the County as a result of the Consultant's negligent performance of the services furnished under this Contract.

12. REUSE AND OWNERSHIP OF DOCUMENTS.

- 12.1. Provided that Consultant has been paid by County for all completed Work in the Scope of Work in accordance with the terms of this Contract, the County shall have unlimited rights, for the benefit of the County, in all reports, statistical data, specifications, notes and other Consultant's work produced in the performance of this Contract, including right to copy plans for any purpose including for the use and maintenance of the Deliverable(s) of the Project. If County determines to reuse or adapt plans signed and sealed by Consultant, Consultant shall be entitled to further reasonable compensation at rates agreed upon by County and Consultant prior to executing and commencing any Work. Further, all documents prepared by Consultant pursuant to this Contract are instruments of service with respect of the Project. The Consultant shall not be liable for the negligent reuse by the County of said documents.
- 12.2. All deliverables analyses, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the Consultant's Work or Services or that have been created during the course of the Consultant's performance under this Contract shall become property of the County and/or "works made for hire" (as defined under the 1976 Copyright Act (Title 17 of the United States Code) as amended) after final payment is made to the Consultant.

13. EXPERT WITNESS.

- 13.1. If requested by the County, The Consultant shall serve as an expert or professional witness for the County in any legal proceedings arising in connection with this Contract. The expert or professional witness fee for Consultant shall be a reasonable rate negotiated at the time the Consultant is called for such a duty.

14. AUDIT AND EXAMINATION OF RECORDS.

- 14.1. For purposes of verifying that invoices submitted, in conjunction with the negotiation of this Contract or any Contract change or other modification are accurate, complete, and current, the County Project Manager, or County's authorized representative(s), shall - until the expiration of three (3) years from the date of final payment under this Contract - have the right to examine those books, records, documents and other supporting data that will permit adequate evaluation of the invoices submitted, along with the computations and projections used therein that were prepared by the Consultant in connection with work under this Contract. Unless the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation. The Consultant agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after final payment under the subcontract.

15. E-VERIFY.

- 15.1. The Consultant covenants and agrees to the following provisions, as required by law:

- 15.1.1 If and to the extent the Agreement meets the criteria set forth at 48 C.F.R. § 52.222-54(e), the criteria of 48 C.F.R. § 52.222-54 are hereby incorporated by reference into this Agreement as if fully set forth herein.
- 15.1.2 Consultant and any of Consultant's Subconsultants shall register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility and work authorization status of all new employees hired by Consultant (or Consultant's Subconsultants) on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement.
- 15.1.3 In the event Consultant enters into a subcontract, Consultant shall require, via written contract, the Subconsultant agree to: (i) register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired on or after the effective date of the subcontract and thereafter during the remaining term of the subcontract; and (ii) provide Consultant with an affidavit stating that the Subconsultant does not employ, contract with, or subcontract with an unauthorized alien. Consultant shall maintain a copy of such affidavit for the duration of this Agreement or the subcontract, whichever is longer. The Consultant shall provide a copy of such affidavit to the County before the Subconsultant begins any work associated with the Agreement. If the County has a good faith belief that a subconsultant knowingly violated the requirements set forth in this Section 15 or Sections 446.09(1) or 446.095 of the Florida Statutes, but also has a good faith belief Consultant otherwise complied with this Section 15 and applicable law, the County shall promptly notify Consultant and order Consultant to immediately terminate its contract with the Subconsultant. Failure to comply with said order shall constitute a material breach of this Agreement.
- 15.1.4 If the County has a good faith belief Consultant has knowingly violated, or if Consultant is found to have violated, this Section 15; Section 446.09(1), Florida Statutes; Section 446.095, Florida Statutes; or the presidential Executive order and subsequent Federal Acquisition Regulation (FAR) rule requiring federal Consultants to use E-Verify, if applicable, then the following shall be true: (i) such violation shall be a material breach of this Agreement by Consultant; (ii) Consultant shall indemnify, defend, and hold harmless the County from any resulting costs or expenses, including fines or penalties levied by a government agency and the County's loss or repayment

of grant funds; (iii) the County may terminate this Agreement immediately and without penalty and such termination shall not be or be considered a breach of this Agreement; and (iv) Consultant shall be liable for any additional costs incurred by the County as a result of the termination of the Agreement. Consultant acknowledges and understands that if the County terminates this Agreement in accordance with this Section 15, Consultant shall be ineligible for award of a public contract for at least 1 year after the date on which the Agreement was terminated.

16. INSURANCE REQUIREMENTS.

- 16.1. Required Types of Insurance: The Consultant shall purchase and maintain at its own expense, during the term of this Contract the types and amounts of insurance with limits no less than those shown on **Exhibit "C"**, in the form and from companies satisfactory to the County. Consultant shall provide the required insurance detailed in Exhibit "C" for the entire term of the Contract. Regardless of anything submitted as proof of insurance, Consultant shall comply with all requirements of Exhibit "C". For the purposes of Exhibit "C", the term "County" shall be defined as the County of Volusia (a body corporate and politic and a subdivision of the State of Florida), including its districts, authorities, separate units of government established by law (constitutional), ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by Contract to provide additional insured status.

17. LOCAL GOVERNMENT POLICIES.

- 17.1. Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Consultant with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-736-5935, purchasing@volusia.org, by mail, Purchasing and Contracts Division, Attn: Public Records Custodian, 123 W. Indiana Ave. RM 302 DeLand, FL 32720.

By entering into this Contract, Consultant acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Consultant entering into a contract for services with the County is required to:

- 17.1.1 Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.
- 17.1.2 Upon request from the County's custodian of public records, provide the County 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.
- 17.1.3 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 Consultant does not transfer the records to the County.

- 17.1.4 Upon completion of the Contract, transfer, at no cost, to the County all public records in the possession of the Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of the Contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
- 17.1.5 Requests to inspect or copy public records relating to the County's Contract for services must be made directly to the County. If Consultant receives any such request, Consultant shall instruct the requestor to contact the County. If the County does not possess the records requested, the County shall immediately notify the Consultant of such request, and the Consultant must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.
- 17.1.6 Consultant acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.
- 17.1.7 Consultant further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County.

Consultant shall indemnify, defend, and hold the County harmless for and against any and all claims, damage awards, and causes of action arising from the Consultant's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Consultant's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Consultant authorizes County to seek declaratory, injunctive, or other appropriate relief against Consultant from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

- 17.2. Financial Records. The 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. The County shall have the right to audit the books, records, and accounts of the Consultant that are directly related to this Contract. The Consultant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Contract. The Consultant shall preserve and make available, at reasonable times for examination and audit by the County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract 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 of three (3) years, the books, records, and accounts shall be retained until resolution of the audit findings; provided, however, that it shall be the County's responsibility to notify the Consultant of the pendency of such audit. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the County's disallowance and recovery of any payment upon such entry.
- 17.3. Payments Subject to Appropriation. Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes (as amended). If at any time funds are not appropriated for the Services and Deliverables provided

or to be provided under this Contract, cancellation shall be accepted by Consultant with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to nonappropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Consultant under this Contract beyond the date of termination except as set forth in Section 6 – Termination. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5 – Contract Price and Compensation. The parties agree to review the Project Work plan and remaining work to be performed in advance of each new fiscal year for the County to compare the funding allocated for the next fiscal year to the cost of the remaining Scope of Work of the Project, to determine whether or not the allocated funding will be adequate to cover all Work to be completed in the next fiscal year. The cost of the remaining Project shall be the Fixed Fee/Lump Sum or Price, Maximum-Not-To-Exceed Compensation less all amounts paid and less all amounts on pending undisputed invoices. Unless the parties agree that the funding allocated for the next fiscal year is adequate for the next fiscal year's Work, either party may terminate this Contract in accordance with the provisions of Section 6 – Termination.

- 17.4. **Truth-in-Negotiations.** Consultant's signature on this Contract shall act as execution of a truth-in-negotiation 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 contract. The certification shall also constitute an affirmation that Consultant has disclosed all debts or fees owed to or that are pending before the County prior to the execution of this Contract.
- 17.5. **No Code Violation or Past Due Debt.** Consultant warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the County shall have the right to terminate this Contract as set forth herein.
- 17.6. **Changes Due to Public Welfare.** 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 or Ordinance.
- 17.7. **Compliance with Applicable Laws.** Consultant shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Additionally, Consultant shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 17.8. **Nondiscrimination and Americans with Disabilities Act.** Consultant shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Consultant agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded or paid by County, including Titles I, II, and III of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with the requirements set forth in the USDOJ Final Rule pertaining to services, programs, and activities offered by state and local government entities to the public through the web and mobile applications, published at 89 FR 31320, regardless of the effective date of same, in order to be deemed ADA compliant. The County

will provide Consultant with prompt written notice with respect to any ADA deficiencies of which the County is aware and Consultant will promptly correct such deficiencies. If the County, the Department of Justice or other government entity tasked with the enforcement of the ADA ("Enforcement Agency") notes any deficiency in the facilities, practices, services, or operations of Consultant furnished or provided in connection with this Contract, Consultant shall, at no additional charge or cost to the County, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Consultant further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the County against any and all claims, sanctions, or penalties assessed against the County, which claims, sanctions, or penalties arise or otherwise result from Consultant's failure to comply with the ADA as required by this paragraph. In performing under this Contract, Consultant agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

17.8.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes (as amended), persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full [ADA Notice](#) under The American with Disabilities Act (Title II). Read the [County of Volusia Grievance Procedure](#) under The Americans with Disabilities Act (Title II).

17.9. Drug Free Workplace. The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that it shall provide a drug-free environment to its personnel during the Term of this Contract and will comply, subject to the prior receipt thereof, with the County's policies on drug-free and smoke-free work place during the term of this Contract.

17.10. Background Checks. Consultant and County understand that certain areas of the County's premises may not be available to Consultant's personnel without background checks and that such access is not required to perform the services contemplated by this Contract.

17.11. Employment of Illegal Aliens. Consultant certifies that it does not knowingly or willingly and will 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.

17.12. Prohibition Against Contingent Fees.

17.12.1. The Consultant warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract without liability and, at its sole discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

17.12.2. Consultant understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Consultant, who offers, agrees, or contracts to solicit or secure County contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes (as amended).

17.12.3. Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof that is a Consultant under this Contract, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes (as amended).

17.12.4. Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes (as amended).

17.13. **EQUAL OPPORTUNITY; DISADVANTAGED BUSINESS ENTERPRISES.** During the performance of this Contract, the Consultant agrees as follows:

17.13.1. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17.13.2. County Code section 2-269, County Ordinance No. 90-20, § 9,5-17-90 of the County Council of the County of Volusia, establishing policies and procedures for the Disadvantaged and Women's Business Enterprises program shall be part of this Contract and the Consultant shall endeavor to fulfill the goals and policies of this Resolution as applicable to this Contract.

18. DISPUTE RESOLUTION.

18.1. The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract 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 this Contract and any applicable Scope of Services. Issues shall be escalated to successive management levels as indicated in Section 18.3.

- 18.2. If a dispute develops between the parties concerning any provision under this Contract, or the interpretation thereof, or any conduct by the other party under these Contracts, and the parties are unable to resolve such dispute within ten (10) 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.
- 18.3. Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) 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 or designated representative(s) 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(s) within ten (10) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	Consultant's Representative	County Representative
10	Consultant	Project Manager
10	Consultant's Local Officer	Director of Purchasing and Contracts
20	Consultant's COO or President	Deputy County Manager

- 18.4. **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. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification. Each party shall bear its own costs and attorney's fees for mediation or arbitration of an issue arising under this Contract. Failure to comply with these dispute resolution procedures as set forth in this Article 11.3 Formal Dispute Resolution does not preclude a party from filing a claim or lawsuit in order to (i) preserve any rights or causes of action that may expire or otherwise lapse due to an applicable claims deadline or statute of limitations or repose or (ii) seek emergency or other injunctive relief as appropriate to preclude irreparable harm or damage. This paragraph survives termination, cancelation, or expiration of this Contract.

19. FORCE MAJEURE.

- 19.1. Neither party shall be liable for any failure or delay in the performance of its obligations under the Contract to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Contract, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

- 19.1.1. Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Contract that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 19.1.2. Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Contract. Such notice shall be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.
- 19.1.3. In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Contract Amendment pursuant to the terms of the Contract.

20. CLAIMS NOTICE.

- 20.1. The Consultant shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in a claim or claims against the County under any of the coverage mentioned herein.

Name: County of Volusia
 Human Resources Division/Risk Management
 Address: 125 West New York Avenue, Suite 141
 DeLand, Florida 32720
 Telephone: (386) 736-5963
 Fax: (386) 822-5006

21. SUCCESSORS AND ASSIGNS.

- 21.1. Consultant may not assign or otherwise convey Consultant's rights and/or obligations under this Contract without 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 no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00).

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.

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.

- 22. ADDITIONAL RIGHTS AND REMEDIES.** The rights and remedies of the County provided for under this Contract are in addition to any other rights and remedies provided by law; the County may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.
- 23. MBE.** This Contract is entered into by the County and Consultant pursuant to the minority business enterprise procurement goals under Section 287.09, F.S., (as amended).
- 24. CONTROLLING LAW.** This Contract is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under the Contract, unless otherwise stated herein.
- 25. MODIFICATIONS TO CONTRACT.** This Contract and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.
- 26. NOTICE.** All **notices** required or permitted to be given under this Contract shall be in writing and shall be deemed to have been given and received (a) when personally delivered, or delivered by same-day courier; or (b) on the third business day after mailing by registered or certified mail, postage prepaid, return receipt requested; or (c) upon delivery when sent by prepaid overnight express delivery service (e.g., FedEx, UPS); or (d) when sent by E-mail or facsimile and upon the receipt by the sending party of written confirmation by the receiving party.

In the case of County:	with a copies of legal notices to:
County of Volusia Attn: Director of Purchasing and Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: (386) 736-5935	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: (386) 736-5950
In the case of Consultant:	with a copy of legal notices to:
ABC Corporation, Inc Attn: Address: Orlando, Phone:	ABC Corporation, Inc Attn: Address: Orlando, Phone:

27. COUNTY DATA.

- 27.1. Consultant agrees and understands that all files and other information and data created in connection with the administration of this Contract constitute a public record, except to the extent it is exempt or proprietary under Florida Law (Chapter 119, Florida Statutes) from disclosure or as preempted by federal law. Consultant agrees to maintain for public record access such files and to maintain for public access such files after termination of this Contract to the extent required by the

laws of the State of Florida.

27.2. Upon any termination or expiration of this Contract, Consultant, upon County's written request, shall promptly deliver, but not more than thirty (30) days after County's request, to County an extract of County's data hosted in the System in XML format or such other format as mutually agreed upon by County and Consultant.

27.3. THE ABOVE DUTIES AND OBLIGATIONS SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS CONTRACT.

27.4. Location of County Data. Consultant shall not out-source any development and/or support for this Contract or transfer any County Data outside the territorial limits of the United States of America, without the written approval of the County.

28. CONFLICTS. Neither Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment related to its performance under this Contract. Consultant further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Consultant is not a party, unless compelled by court process. Further, Consultant agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Consultant is permitted pursuant to this Contract to utilize Subconsultants to perform any Services required by this Contract, Consultant agrees to require such Subconsultants, by written Contract, to comply with the provisions of this section to the same extent as Consultant.

29. REFERENCES TO COUNTY OR CONSULTANT. Consultant agrees that during the term of this Contract, except as provided herein, Consultant may not reference County in Consultant's website, and/or press releases, and, may not place County's name and logo on Consultant's Web site or in collateral marketing materials relating to Consultant's products and Services without prior review and written approval by County. Further, Consultant agrees that it may not use County's name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without County's prior written consent. Termination or expiration of this Contract shall not affect Consultant's obligation in this regard and such obligation shall survive the termination or cancellation of this Contract.

30. BANKRUPTCY RIGHTS AND COUNTY. All rights and licenses granted under or pursuant to this Contract or any attachments hereto by Consultant to County are, and shall otherwise be deemed to be, for purposes of Section 365 (n) of the United States Bankruptcy Code (the "Code"), or replacement provision therefore, licenses to rights to "intellectual property" as defined in the Code. The parties agree that County, as licensee of such rights under this Contract, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Consultant under the Code, County shall be entitled to retain all of its rights under this Contract.

31. WAIVER OF BREACH AND MATERIALITY. Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this 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 this Contract.

32. SEVERANCE. In the event this Contract or a portion of this Contract is found by a court of competent

jurisdiction to be invalid, the remaining provisions shall continue to be effective to the extent practicable unless County or Consultant elects to terminate this Contract.

- 33. ENTIRE CONTRACT.** This Contract contains the entire contract between Consultant and County. Any modifications to this Contract shall not be binding unless in writing and signed by both parties.
- 34. APPLICABLE LAW, VENUE AND WAIVER OF JURY TRIAL.** This Contract shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Contract shall be exclusively in the state courts of the Judicial Circuit of County of Volusia, Florida, unless one or more causes of action are solely cognizable in federal court, in which case, venue for and jurisdiction over such dispute(s) shall be in the Middle District of Florida, Orlando Division. By entering into this Contract, Consultant and County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Contract, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Contract.
- 35. PRIOR CONTRACTS.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Contract that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.
- 36.** This Contract or Task Assignment, together with any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between County and Consultant and supersede all prior written or oral understandings.
- 37. SCRUTINIZED COMPANIES, FL STATUE SECTION 287.135 AND 215.473.** Consultant must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, Consultant must also certify that Consultant is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law. The County will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. Consultant must have submitted the certification form with their response to County Solicitation No. 26-SQ-108SR. Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Consultant of the County's determination concerning the false certification. The Consultant shall have five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Consultant shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Consultant does not demonstrate that the County's determination of false certification was made in error then the County shall have the right to terminate the Contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.
- 38.** Vendor acknowledges that _____ (the "Authorized Signatory") is authorized to execute contracts/agreements with the County of Volusia and any affixed electronic or conformed signature of the Authorized Signatory shall be the act of and attributable to the Authorized Signatory. By signing this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed signature as his or her own and designates a copy of same for use as an official record by the County of Volusia.

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IN WITNESS WHEREOF, the parties have made and executed this Contract for Consulting Services for **Professional Design Services for Dirksen Drive (CR 4162) (US 17/92 to Sunrise Boulevard)**, the day and year below written.

Attest:

[NAME OF COMPANY]

Signature

BY: _____
Signature

Print Name

Print Name

Title

Title

Date: _____

Date: _____

Attest:

COUNTY OF VOLUSIA

George Recktenwald
County Manager

BY: _____
Jeffrey S. Brower
County Chair

Date: _____

Date: _____

Approved: _____
