



To: Tourist Development Council

From: Paul Astleford

Re: Encumbrance from Convention Grant

Date: August 16, 2017

Name of Group: Capella University/Capella Education Company 2019 Doctoral Residency

CVB Contact: Karen Townsend

Hotel Utilized: Hyatt Regency Jacksonville Riverfront

Dates: May 2-5, 2019

Room nights: 1,850 (at \$7 per room).

Estimated Attendance: 850

Funds Use: AV, Meeting Room Rental, Reception

Funds to be encumbered: \$12,950

Summary: Capella University's Doctoral Residency is a face-to-face residential learning experience designed to enhance student's process of acquiring their Doctorate degree.

Economic Impact: \$597,864.00

August 1, 2017

Jessca Ahlborn
Senior Manager, Event Programs
Capella University/Capella Education Company
225 South 6th Street, 9th Floor
Minneapolis, MN 55402



Where Florida Begins.
visitjacksonville.com
208 N. Laura Street, Suite 102
Jacksonville, Florida 32202
800.733.2668

Dear Jessica:

We are delighted to learn that you have selected the Hyatt Regency Jacksonville Riverfront Hotel as the host location for your Doctoral Residency to be hosted over the dates of May 2-5, 2019. This letter is to inform you that Visit Jacksonville has conditionally awarded an expense reimbursement grant in the amount of \$7.00 per Actualized Documented Room Night up to a MAXIMUM AWARD of \$12,950.00. Should the number of room nights picked up be lower than 1,850, the grant reimbursement amount will be \$7.00 per room based on the number of actualized documented room nights.

This grant may only be used as reimbursement for the following incurred Authorized Event Expenditures:

See page two for descriptions

- A/V
- ROOM RENTAL
- RECEPTION (food and beverage only)

Additionally, Visit Jacksonville will provide the following incentives and services:

- Complimentary Visit Jacksonville convention services

The following outlines the requirements and stipulations to receive the above grants, incentives and services:

- Grants, Incentives and Services will not be offered if the event is not held at the Hyatt Regency Jacksonville Riverfront over the above referenced dates.
- Current W-9, total event attendance and copies of paid invoices/receipts must be submitted no later than 30 days after the event date(s) in order to receive grant reimbursement.

To signify Applicant's acceptance, this **AWARD OFFER/ACCEPTANCE** must be signed below by an **AUTHORIZED AGENT**, and the **original** countersigned document must be returned via fax (904)798-9103 or scanned and emailed to: ktownsend@visitjacksonville.com.

I acknowledge that by accepting these grant funds, the company name, event name, event dates and host/overflow hotel information will become public record.

****Offer is invalid if this confirmation letter is not signed and returned by August 31, 2017.**

Sincerely,

Monica Smith
Vice President, Sales & Services
Visit Jacksonville
Date: 7/31/2017

Client Name: Jessica Ahlborn
Organization: Capella University/Capella Education Company
By: _____
Print Name: _____
Title: _____
Date: _____

CC: Karen Townsend
National Accounts Manager

The Tourist Development Council grant you have been awarded will reimburse your organization for the following Incurred Authorized Event Expenditures upon submission of appropriate documentation, including W-9 and copies of paid.

- **A/V**
 - Used at host hotel or off site venue

- **Room Rental**
 - Rental costs for hotel meeting space or off site venue rental fees

- **Reception**
 - Reception or event hosted for benefit of convention/event.
 - Grant can ONLY be used food and beverage expenses.
 - Copy of paid invoice(s) and BEO must be submitted.

August 1, 2017

Jessica Ahlborn
Senior Manager, Event Programs
Capella University/ Capella Education Company
225 South 6th Street, 9th Floor
Minneapolis, MN 55402



visitjacksonville.com
208 N. Laura Street, Suite 102
Jacksonville, Florida 32202
800.733.2668

Dear Jessica,

We are delighted to learn that you have selected the Hyatt Regency Jacksonville Riverfront Hotel as the host location for your Masters Residency to be hosted over the dates of April 24- May 2, 2019. This letter is to inform you that Visit Jacksonville has conditionally awarded an expense reimbursement grant in the amount of \$7.00 per *Actualized Documented Room Night* up to a **MAXIMUM AWARD** of \$25,550.00. Should the number of room nights picked up be lower than 3,650, the grant reimbursement amount will be \$7.00 per room based on the number of actualized documented room nights.

This grant may only be used as reimbursement for the following incurred Authorized Event Expenditures:

See page two for descriptions

- A/V
- ROOM RENTAL
- RECEPTION (food and beverage only)

Additionally, Visit Jacksonville will provide the following incentives and services:

- Complimentary Visit Jacksonville convention services

The following outlines the requirements and stipulations to receive the above grants, incentives and services:

- Grants, Incentives and Services will not be offered if the event is not held at the Hyatt Regency Jacksonville Riverfront over the above referenced dates.
- Current W-9, total event attendance and copies of paid invoices/receipts must be submitted **no later than 30 days** after the event date(s) in order to receive grant reimbursement.

To signify Applicant's acceptance, this **AWARD OFFER/ACCEPTANCE** must be signed below by an **AUTHORIZED AGENT**, and the **original** countersigned document must be returned via fax (904)798-9103 or scanned and emailed to: ktownsend@visitjacksonville.com.

I acknowledge that by accepting these grant funds, the company name, event name, event dates and host/overflow hotel information will become public record.

** Offer is invalid if this confirmation letter is not signed and returned by August 31, 2017.

Sincerely,

Monica Smith
Vice President, Sales & Services
Visit Jacksonville

Date: 7/31/17

Client Name: Jessica Ahlborn

Organization: Capella University/Capella Education Company

By: _____

Print Name: _____

Title: _____

Date: _____

CC: Karen Townsend
National Accounts Manager

The Tourist Development Council grant you have been awarded will reimburse your organization for the following incurred Authorized Event Expenditures upon submission of appropriate documentation, including W-9 and copies of paid.

- **A/V**
 - Used at host hotel or off site venue

- **Room Rental**
 - Rental costs for hotel meeting space or off site venue rental fees

- **Reception**
 - Reception or event hosted for benefit of convention/event.
 - Grant can **ONLY** be used food and beverage expenses.
 - Copy of paid invoice(s) and BEO must be submitted.



To: Tourist Development Council

From: Paul Astleford

Re: Encumbrance from Convention Grant

Date: August 16, 2017

Name of Group: IEEE/PES Transformers Conference

CVB Contact: Veronica Gruber

Hotel(s) Utilized: Hyatt Regency Jacksonville Riverfront

Date: October 11-21, 2018

Room nights: 2,500 (at \$3 per room)

Estimated Attendance: 600

Funds Use: AV, and/ or Marketing

Funds to be encumbered: \$7,500

Summary: IEEE and its members inspire a global community to innovate for a better tomorrow through its more than 420,000 members in over 160 countries, and its highly cited publications, conferences, technology standards, and professional and educational activities. IEEE is the trusted "voice" for engineering, computing, and technology information around the globe.

Economic Impact: \$796,920

May 30, 2017, 2017

Mr. Gregory W. Anderson
Treasurer and SC Chair, Meetings
IEEE/PES Transformers Committee
18110 Birch Drive, Suite 148, PMB 350
Omaha, NE 68164



Visit Jacksonville.com
208 N. Laura Street, Suite 102
Jacksonville, Florida 32202
800.733.2668

RE: IEEE 2018 Transformers Conference

Dear Gregory:

We are delighted to learn that you have selected the Hyatt Regency Jacksonville Riverfront as the host location for your 2018 Conference to be hosted over the dates of October 11-21, 2018. This letter is to inform you that Visit Jacksonville has conditionally awarded an expense reimbursement grant in the amount of \$3.00 per Actualized Documented Room Night up to a MAXIMUM AWARD of \$7,500. Should the number of room nights picked up be lower than 2,500, the grant reimbursement amount will be \$3.00 per room based on the number of actualized documented room night.

This grant may only be used as reimbursement for the following incurred Authorized Event Expenditures:
See page two for descriptions

- A/V
- MARKETING (advertising and promotion of conference, criteria apply)

Additionally, Visit Jacksonville will provide the following incentives and services:

- Complimentary Visit Jacksonville convention services
- Welcome signage at the Jacksonville Airport
- Welcome table - staffed (1 day on peak arrival, 4 hours max)
- Welcome signage at or near the host hotel

The following outlines the requirements and stipulations to receive the above grants, incentives and services:

- Grants, incentives and services will not be offered if the event is not held at the Hyatt Regency Jacksonville Riverfront over the above referenced dates.
- Current W-9, total event attendance and copies of paid invoices/receipts must be submitted no later than 30 days after the event date(s) in order to receive grant reimbursement.

To signify Applicant's acceptance, this AWARD OFFER/ACCEPTANCE must be signed below by an AUTHORIZED AGENT, and the original countersigned document must be returned via fax (904)798-9103 or scanned and emailed to: vgruber@visitjacksonville.com

I acknowledge that by accepting these grant funds, the company name, event name, event dates and host/overflow hotel information will become public record.

**Offer is invalid if this confirmation letter is not signed and returned by June 15, 2017.

Sincerely,

Monica Smith
Vice President, Sales & Services
Visit Jacksonville
Date: 5/30/2017

Client Name
Organization
By: Greg Anderson
Print Name: Gregory W. Anderson
Title: Treasurer
Date: 6/11/2017

CC: Veronica Gruber
Sales Consultant

The Tourist Development Council grant you have been awarded will reimburse your organization for the following Incurred Authorized Event Expenditures upon submission of appropriate documentation, including W-9 and copies of paid.

- A/V
 - Used at host hotel or off-site venue

- Marketing
 - Marketing expenses that are used to encourage attendees to come to your meeting/convention in Jacksonville. The marketing materials need to include the Visit Jacksonville logo.
 - Examples of qualified marketing materials:
 - Printing of meeting/convention materials to encourage attendance, may include: postcards, flyers, newsletters, conference invitation, etc.
 - Digital advertising to include, but not limited to: social media, banner ads, etc.
 - *If you have any questions on an item being approved for reimbursement please email your Visit Jacksonville services representative.*
 - Expenses not reimbursable:
 - Printed materials used at the meeting/convention here in Jacksonville (i.e., programs, signage, etc.)
 - After the meeting/convention you must provide:
 - Copy of paid invoice(s) which must include the advertising run dates
 - Samples of the marketing (tear sheet, printed newsletter, screen shot of digital ad, etc.).



To: Tourist Development Council

From: Paul Astleford

Re: Encumbrance from Convention Grant

Date: August 16, 2017

Name of Group: Qorvo 2018 Global Sales Conference

CVB Contact: Bob Doering

Hotel(s) Utilized: Hyatt Regency Jacksonville Riverfront

Date: April 13-18, 2018

Room nights: 1,855 (at \$5 per room)

Estimated Attendance: 450

Funds Use: AV, and/or Reception

Funds to be encumbered: \$9,275

Summary: Qorvo is an American semiconductor company that designs, manufactures, and supplies radio-frequency systems and solutions for applications that drive wireless and broadband communications, as well as foundry services.

Economic Impact: \$564,847.50

June 6, 2017

Chris McKinney
Executive Assistant
Qorvo
2300 NE Brookwood Parkway
Hillsboro, OR 97124

Re: 2018 Global Sales Conference

Dear Chris,

We are delighted to learn that you have selected the Hyatt Regency Jacksonville Riverfront as the host location for your 2018 Global Sales Conference to be hosted over the dates of April 13-18, 2018. This letter is to inform you that Visit Jacksonville has conditionally awarded an expense reimbursement grant in the amount of \$5.00 per Actualized Documented Room Night up to a MAXIMUM AWARD of \$9,275 per event. Should the number of room nights picked up be lower than 1,855, the grant reimbursement amount will be \$5.00 per room based on the number of actualized documented room nights.

This grant may only be used as reimbursement for the following incurred Authorized Event Expenditures:
See page two for descriptions

- A/V
- RECEPTION (food and beverage only)

- Additional concessions/incentives:
 - Complimentary Visit Jacksonville convention services
 - Welcome signage at the Jacksonville Airport
 - Welcome signage at the Jacksonville Landing
 - Ten (10) VIP amenity
 - Three (3) Individual roundtrip airport transfer
 - Welcome table -- staffed (1 day on peak arrival, max of 4 hours)
 - Welcome signage at or near the host hotel

The following outlines the requirements and stipulations to receive the above grants, incentives and services:

- Grants, Incentives and Services will not be offered if the event is not held at the Hyatt Regency Jacksonville Riverfront over the above referenced dates.
- Current W-9, total event attendance and copies of paid invoices/receipts must be submitted no later than 30 days after the event date(s) in order to receive grant reimbursement.

To signify Applicant's acceptance, this AWARD OFFER/ACCEPTANCE must be signed below by an AUTHORIZED AGENT, and the original countersigned document must be returned via fax (904)798-9103 or scanned and emailed to: bdoering@visitjacksonville.com

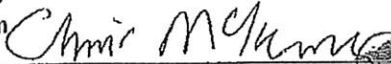
I acknowledge that by accepting these grant funds, the company name, event name, event dates and host/overflow hotel information will become public record.

**Offer is invalid if this confirmation letter is not signed and returned July 6, 2017.

Sincerely,



Monica Smith
Vice President, Sales & Services
Visit Jacksonville
Date: 6/6/2017

Client Name
Organization
By: 
Print Name: Chris McKinney
Title: Executive Assistant
Date: 6-6-2017

CC: Bob Doering
National Accounts Manager

Visit Jacksonville
and the Beaches

VisitJacksonville.com
208 N. Laura Street, Suite 102
Jacksonville, Florida 32202
800.733.2668

The Tourist Development Council grant offered will reimburse your organization for the following incurred Authorized Event Expenditures upon submission of appropriate documentation, including W-9 and copies of paid invoices.

- **A/V**
 - Used at host hotel or off site venue

- **Reception**
 - Reception or event hosted for benefit of convention/event.
 - Grant can **ONLY** be used food and beverage expenses.
 - Copy of paid invoice(s) and BEO must be submitted.

Section 1 PRELIMINARY INFORMATION	
Authorized Agent Name	Jared Rice
Authorized Agent Title	Executive Director
Contact Person Name	Jared Rice
Contact Person Title	Executive Director
Company/Organization	THE PLAYERS Champion
Address	13000 Sawgrass Village Circle
City	Building 6
State	Ponte Vedra Beach
Zip Code	Florida
E-mail Address	32082
Work Phone	jaredrice@pgatourhq.com
Home Phone/Cell Phone	904-273-3453
Event Website	THEPLAYERS.com

Section 2 EVENT INFORMATION	
Event/Project Name	THE PLAYERS Regional Tourism Cooperative
Event/Project Location	Ponte Vedra Beach, FL
Sponsoring Organization/Name	THE PLAYERS Championship
Event/Project Description	Maximize opportunities between THE PLAYERS Championship and Regional Tourism Industry to generate room nights, ticket sales, golf rounds and other tourist activities during THE PLAYERS week.
Event Date Begins (MM/DD/YY)	5/8/18
Event Date Ends (MM/DD/YY)	5/13/18
Is this a non-profit organization?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Tax Code Status	501 (c) 6
Is this organization tax exempt?	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
What is your Federal ID# as it appears on Form W-9?	59-0999206
If your delegates are exempt from paying hotel occupancy tax, please explain.	N/A



To: Tourist Development Council

From: Paul Astleford

Re: Encumbrance from Convention Grant

Date: August 16, 2017

Name of Group: Capella University/Capella Education Company 2019 Masters Residency

CVB Contact: Karen Townsend

Hotel(s) Utilized: Hyatt Regency Jacksonville Riverfront

Date: April 24-May 2, 2019

Room nights: 3,650 (at \$7 per room)

Estimated Attendance: 745

Funds Use: AV, Room Rental, and/or Reception

Funds to be encumbered: \$25,550

Summary: Capella University's Masters Residency is a face-to-face residential learning experience designed to enhance student's process of acquiring their Master's degree.

Economic Impact: \$1,263,936

RESOLUTION 2017-01

A RESOLUTION OF THE DUVAL COUNTY TOURIST DEVELOPMENT COUNCIL (“TDC”) APPROVING AND AUTHORIZING A CONTRACT AWARD TO JACKSONVILLE AND THE BEACHES CONVENTION & VISITORS BUREAU, INC. D/B/A VISIT JACKSONVILLE AND THE DALTON AGENCY TO PERFORM MARKETING SERVICES FOR THE TDC IN THE NOT TO EXCEED AMOUNT OF \$2,469,500, SUBJECT TO NEGOTIATED CONTRACT TERMS AND APPROPRIATION OF FUNDS BY THE CITY COUNCIL IN THE FY17-18 ANNUAL BUDGET ORDINANCE; AUTHORIZING THE OFFICE OF GENERAL COUNSEL TO MAKE ADDITIONAL CHANGES TO THE MARKETING SERVICES CONTRACT FOR THE PURPOSE OF CORRECTING CLERICAL ERRORS.

WHEREAS, the Duval County Tourist Development Council (“TDC”), acting on behalf of the City, issued an Omnibus Request for Proposal for Duval County Tourist Development Plan Components: (1) Tourist Bureau Services, (2) Marketing Services, and (2) Convention Sales Services Bid No. ESC-0136-17 (the “*Omnibus RFP*”);

WHEREAS, the Omnibus RFP consisted of three individual and separate Request for Proposals for the Tourist Bureau Services, Marketing Services and Convention Sales Services Tourist Development Plan components, and Jacksonville and the Beaches Convention & Visitors Bureau, Inc. d/b/a Visit Jacksonville and The Dalton Agency, Inc. (individually and severally, the “Contractor”) submitted a response to the Marketing Services plan component;

WHEREAS, the Marketing Services plan component description of services, minimum requirements, and evaluation criteria were described in Section 4-2, Section 5-2, and Attachment B-2 of the Omnibus RFP. For purposes of this Resolution, the term “*Marketing Services RFP*” shall refer to Section 4-2, Section 5-2, Attachment B-2 and all other sections of the Omnibus RFP that were applicable to all three plan components as indicated therein;

WHEREAS, based on Contractor’s response to the Marketing Services RFP dated April 28, 2017, a copy of which is on file with the City Procurement Division (the “*Response*”) and subsequent negotiations by the parties, the TDC desires to award a contract for Marketing Services to the Contractor in the form substantially attached hereto as **Exhibit A** (the “*Marketing Services Contract*”).

BE IT RESOLVED, by the Tourist Development Council:

Section 1. The TDC finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The TDC hereby approves and authorizes a contract award to Contractor to perform the scope of work contained in the Marketing Services RFP in the not to exceed

amount of \$2,469,500, subject to the negotiated terms and conditions contained in the Marketing Services Contract and the appropriation of funds by the City Council for such purposes in the FY17-18 annual budget ordinance.

Section 3. The TDC hereby authorizes the Office of General Counsel to make additional changes to the Marketing Services Contract for the purposes of correcting clerical errors and making other non-material changes as may be needed to further clarify the TDC's intent regarding the Marketing Services Contract.

Section 4. This Resolution 2017-01 shall become effective upon its approval by the TDC this 16thth day of August, 2017.

WITNESS:

**DUVAL COUNTY TOURIST DEVELOPMENT
COUNCIL**

Anna Lopez Brosche, Council President/Chairman

VOTE: In Favor: _____ Opposed: _____ Abstained: _____

FORM APPROVAL:

Office of General Counsel

Exhibit A

(Immediately following this page)

CONTRACT FOR MARKETING SERVICES
(Duval County Tourist Development Plan)

THIS CONTRACT FOR MARKETING SERVICES (“Contract”), made and entered into this _____, 2017 (the “*Effective Date*”), by and between the **CITY OF JACKSONVILLE** (the “*City*” or “*TDC*”), a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida, and **JACKSONVILLE AND THE BEACHES CONVENTION & VISITORS BUREAU, INC.**, doing business as “Visit Jacksonville” (“*Visit Jacksonville*”) and **THE DALTON AGENCY, INC.** (“*Dalton Agency*”), (jointly and severally referred to herein as the “*Contractor*”).

WHEREAS, the Duval County Tourist Development Council (“*TDC*”), acting on behalf of the City, issued an Omnibus Request for Proposal for Duval County Tourist Development Plan Components: (1) Tourist Bureau Services, (2) Marketing Services, and (2) Convention Sales Services Bid No. ESC-0136-17 (the “*Omnibus RFP*”);

WHEREAS, the Omnibus RFP consisted of three individual and separate Request for Proposals for the Tourist Bureau Services, Marketing Services and Convention Sales Services Tourist Development Plan components, and the Contractor submitted a response to the Marketing Services plan component.

WHEREAS, the Marketing Services plan component description of services, minimum requirements, and evaluation criteria were described in Section 4-2, Section 5-2, and Attachment B-2 of the Omnibus RFP. For purposes of this Contract, the phrase and term “*Marketing Services Request for Proposal*” or “*Marketing Services RFP*” shall refer to Section 4-2, Section 5-2, Attachment B-2 and all other sections of the Omnibus RFP that were applicable to all Plan Components as indicated therein.

WHEREAS, based on Contractor’s response to the Marketing Services RFP dated April 28, 2017, a copy of which is on file with the City Procurement Division (the “*Response*”), the TDC awarded this Contract to Contractor;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

1. **Recitals; Capitalized Terms.** The Recitals above are true and correct and incorporated herein by reference. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Marketing Services RFP.

2. **Incorporation of Marketing Services RFP terms; Response; Exhibits.** The Marketing Services RFP terms are incorporated herein by reference. The terms of the Marketing Services RFP include, without limitation, the following sections and forms contained in the Omnibus RFP:

(a) Section 1 (Specific Information Regarding this Omnibus RFP);

- (b) Section 2 (General Instructions)
- (c) Section 3 (General Terms and Conditions of Contract)
- (d) Section 4-2 (Description of Services)
- (e) Section 5-2 (Minimum Requirements)
- (f) Attachment A (Response Format)
- (g) Attachment B-2 (Evaluation Criteria Matrix)
- (h) Attachments C through J
- (i) Attachment K-2 Listing of Available Documents for Review
- (j) Contractor's completed and executed Forms 1 through 5

The Response, as accepted and modified by City, is incorporated herein by reference. Any terms in the Response that are prohibited under the Marketing Services RFP shall not be included in this Contract. Any terms in the Response that are inconsistent with the terms of this Contract shall be void and of no effect.

All exhibits attached to this Contract are incorporated herein by this reference.

3. Transition Start-up Period; Service Period.

(a) Transition Start-up Period. From the Effective Date of this Contract until September 30, 2017 (the "*Transition Start-up Period*"), Contractor may work with the Tourist Development Council staff to ensure a smooth transition from the services performed by Visit Jacksonville under the Agreement for Marketing, Advertising, Promotional, and Support Services dated October 1, 2012 and expiring on September 30, 2017 (the "*Prior Contract*"), and the services to be provided by Contractor under this Contract. The Tourist Development Council shall provide reasonable assistance and cooperation to Contractor during the Transition Start-up Period.

(b) Service Period; Term. The initial service period of this Contract shall commence on October 1, 2017 and end on September 30, 2022 (the "*Term*"), unless terminated sooner by the City pursuant to the provisions of this Contract. City, in its sole discretion and upon satisfactory performance by Contractor, shall have the option to renew the Term of this Contract subject to the same term and conditions contained herein for one (1) five-year period.

4. Description of Services; Scope of Work. The Contractor shall perform the Tourist Development Plan Marketing Services described on **Exhibit A** attached hereto ("*Scope of Work*" or "*Services*"). If any services, functions or responsibilities not specifically described on **Exhibit A** are necessary for the proper performance and provision of the Services, such services, functions or responsibilities shall be deemed to be implied by and included within the Scope of Work to the same extent and in the same manner as if specifically described herein. During the Term, Contractor shall perform the Scope of Work in accordance with the Comprehensive Marketing Plan, the Annual Approved Budget and the Annual Marketing Plan.

5. Maximum Indebtedness; Restrictions on Use of Funds.

(a) **Maximum Indebtedness.** As required by Section 106.431, *Ordinance Code*, the City's maximum indebtedness for the Services to be provided by Contractor during the Term shall not exceed Two Million Four Hundred Sixty-nine Thousand Five Hundred and 00/No Dollars (\$2,469,500.00) for Fiscal Year 2017-2018, contingent each fiscal year upon the existence of lawfully appropriated funds for the Contract. At the time of Contract execution, Contractor acknowledges and understands that the Maximum Indebtedness is contingent upon the City Council of the City of Jacksonville's approval and appropriation of the Tourist Development Council's 2017-2018 proposed annual budget (the "***TDC Budget***"). The TDC Budget is included in the 2017-2018 annual budget ordinance to be approved by the City Council (the "***Annual Budget Ordinance***"). In the event City Council's approval of the TDC Budget or Annual Budget Ordinance adversely impacts the Maximum Indebtedness amount above, Contractor agrees to execute any necessary amendments to this Contract as required by the TDC to reduce the Maximum Indebtedness, the Services, and any other documents required by the TDC within fifteen (15) days of the TDC's written demand to Contractor. Contractor also understands and acknowledges that the funding under this Contract for subsequent fiscal years is contingent upon the City Council's approval and appropriation of funds in the annual budget ordinance.

(b) **Restrictions on Use of Funds.** Unless otherwise approved by the TDC, Contractor shall not exceed the Tourist Development Plan component allocations shown on the City Council approved Tourist Development Council budget each fiscal year. Contractor shall use and expend City funds during the Term in strict compliance with the conditions, restrictions and provisions set forth in the Duval County Tourist Development Plan contained in Section 666.108, *Ordinance Code*, as amended, and Chapter 666, *Ordinance Code*, as amended.

6. Annual Budget Approval.

(a) **Submittal; Approval.** On or before September 15, 2017, Contractor shall submit and present a proposed annual budget in the format required under this Section for Fiscal Year 2017-2018 to the Tourist Development Council for review and approval. The Tourist Development Council shall review, modified as necessary, and approve Contractor's proposed annual budget for Fiscal Year 2017-2018 on or before September 30, 2017. Each fiscal year thereafter, Contractor shall present and submit to the Tourist Development Council a proposed detailed line item annual budget in June of each fiscal year for the upcoming fiscal year. Contractor's proposed annual budget shall be consistent with the Tourist Development Council's proposed budget for the upcoming fiscal year, the Comprehensive Marketing Plan, and the Annual Marketing Plan. The Tourist Development Council shall review, modify as necessary, and approve Contractor's proposed annual budget in July or August of each fiscal year, but in no event later than September 30th of each fiscal year. The Contractor's proposed annual budget as may be amended and approved by the Tourist Development Council shall be the "***Approved Annual Budget***". The Contractor shall provide the Services under this Contract in accordance with the Approved Annual Budget.

(b) **Budget Format.** Contractor's proposed annual budget shall be in an acceptable

format to the Tourist Development Council and the City Council Auditor and shall set forth how funds provided under this Contract will be spent for the fiscal year. Each identified task in the Marketing component of the Tourist Development Plan listed in Section 666.108(b)(2)(i)-(x), *Ordinance Code* (i.e., name branding; market targeting; audience targeting; targeting direct flight markets; website; social media sites and digital advertising; visitor magazine; media relations; and topic specific brochures and videos) shall have its own identified budget line item or line items. Such budget shall also provide detailed comparisons regarding how the annual budget compares to each allocation identified in the proposed budget submitted in the Response. Furthermore, the budget shall clearly identify as to each task the allocation between direct overhead for salaries, facilities, equipment, etc; payments to subcontractors for media production, and payments for media placements; and number of employees and staff positions. The budget shall also include a line item total (and separate line items) for the aggregate amount of the Minimum Monthly Overhead Expenses defined in Section 9 below. All travel and dining, parking and similar expense payments or reimbursements shall be directly disclosed and reflected in the proposed annual budget. In addition to the foregoing proposed annual budget, the Contractor shall provide, as a separate attachment, supplemental information to the proposed annual budget ("*Supplement Budget Information Sheet*"). The Supplemental Budget Information Sheet shall include a distinct breakout of the following items which are acknowledged to be contained within the Marketing plan subpart components described above:

- i. Amount of proposed annual budget allocated to travel, meal and entertainment expenses/reimbursement. Identify allocation between local travel and expenses versus out-of-county travel and expenses;
- ii. Amount of proposed annual budget allocated to buildings and equipment and general overhead not including staffing;
- iii. Amount of proposed annual budget allocated to staffing and total number of employees by job category and positions; and
- iv. Allocation of proposed annual budget between media types- i.e. print, television, radio, social media, etc.

Contractor shall also attach the Annual Marketing Plan to the proposed annual budget.

(c) Budget Amendments. Contractor may amend the Annual Approved Budget by transferring funds between established budget line items up to ten percent (10%) of each line item or a maximum amount of \$_____, whichever is less (the "Budget Transfer Cap"), without further approval by the TDC. Contractor may not transfer more than the Budget Transfer Cap between line items on the Annual Approved Budget without obtaining the prior approval of the TDC.

(d) City Council Approval. Contractor understands and acknowledges that funding under this Contract for the 2017-2018 fiscal year and subsequent fiscal years is contingent upon the City Council's approval and appropriation of the TDC Budget in the Annual Budget Ordinance. In the event City Council amends the TDC Budget during the annual budget ordinance process, Contractor shall revise the Approved Annual Budget and the Annual Marketing Plan to be consistent with the City Council's approved Tourist Development Council budget and submit the revised Approved Annual Budget and the revised Annual Marketing Plan

to the Tourist Development Council for further review and approval by the Tourist Development Council.

(e) Budget Updates. The Contractor shall provide at each regular meeting of the Tourist Development Council an accounting for all Tourist Development Council monies held or expended during the current year through the preceding month.

7. Comprehensive Marketing Plan. On or before September 15, 2017, Contractor shall deliver and present the Tourist Development Council with the Comprehensive Marketing Plan (defined in the Marketing Services RFP) for review and approval. Unless modified by the TDC, the Comprehensive Marketing Plan shall be consistent in strategy and allocation of resources with the conceptual marketing plan submitted in the Response. The Tourist Development Council shall review and approve the Comprehensive Marketing Plan on or before September 30, 2017, or such other date as agreed to by the parties, prior to Contractor's implementation of the plan. The Contractor shall implement the TDC approved Comprehensive Marketing Plan during the Term and the approved Comprehensive Marketing Plan shall be incorporated herein by reference and become a binding part of this Contract. Contractor shall not modify the Comprehensive Marketing Plan without first obtaining the approval of the Tourist Development Council.

8. Annual Marketing Plan. On or before September 15, 2017, Contractor shall submit and present a proposed annual marketing plan in the format required under this Section for Fiscal Year 2017-2018 to the Tourist Development Council for review and approval. The Tourist Development Council shall review, amend as necessary, and approve Contractor's proposed annual marketing plan for Fiscal Year 2017-2018 on or before September 30, 2017. Each fiscal year thereafter, Contractor shall submit a proposed annual marketing plan to be reviewed, modified as necessary, and approved by the Tourist Development Council in April of each fiscal year ("*Annual Marketing Plan*"). The Annual Marketing Plan shall incorporate any suggested improvements or marketing concerns contained in Contractor's Annual Performance Evaluation and shall be consistent with the Comprehensive Marketing Plan. The Annual Marketing Plan shall contain sufficient detail that marketing campaigns designed to promote particular events or experiences shall include explicit goals for increases in the number of room nights attributable to such campaign and the methodology that will be used for measurement of the same. The Annual Marketing Plan shall analyze the allocation of marketing funds within the Tourist Development Plan component and suggest adjustments if appropriate. Such analysis shall be based on historical experience as well as information evidenced in nationwide industry trends, such as downturns in tourism in other parts of the state or country that may translate into tourism opportunities for Jacksonville. Among other things, the Annual Marketing Plan shall include a set of specific marketing campaigns and actions to be taken that will increase the number of room nights spent in Jacksonville by out-of-town leisure tourist. Using the 2016-2017 Fiscal Year as a benchmark, the Tourist Development Council will evaluate the Contractor's success based on the Performance Measures (defined below), which include without limitation, increases in the overall number of room nights, during each year of the Term. Contractor's successes shall be related to specific, purposeful activities of the Contractor under this Contract.

9. Invoice and Payment. Payment to Contractor for Services rendered for the previous month shall be made by the Tourist Development Council on a monthly reimbursement basis in no less than the minimum monthly overhead, salary for hired staff only and administrative expense amount ("*Minimum Monthly Overhead Expenses*") as indicated on the Approved Annual Budget. Any salary expenses included in the overall Minimum Monthly Overhead Expenses shall only be for hired staff and shall not salary expenses associated with unfilled, vacant staff positions. Contractor may submit up to two payment requests per month to the Tourist Development Council for Services performed under the Contract for the month. Contractor's first payment request may be made on the first day of each month for any paid fixed expense amounts contained in the Minimum Monthly Overhead Expense. Contractor's second payment request may be made on no later than the twentieth day of each month for all other monthly expenses and Services performed under the Contract for the month. Contractor's payment request shall be submitted on the payment request form attached hereto as **Exhibit C**. Contractor shall include invoices, receipts, accounting back-up, copies of fully executed paid media or advertisement contracts and such other requested documentation satisfactory to the Tourist Development Council to allow and authorize payment under the Contract ("*Back-up Documentation*"). The Tourist Development Council shall make payments to Contractor within forty-five (45) days after receipt of the Back-up Documentation. Notwithstanding the foregoing, the City's reimbursements for prepaid media or advertisements shall be based on copies of fully executed paid media and advertisement contracts provided by Contractor. Contractor shall promptly remit evidence to City of performed or satisfied media or advertisement contracts at the end of each month or as soon as the media or advertisement is performed and satisfied. After Contractor receives reimbursement under this Contract for any prepaid media or advertisement contracts as provided herein, Contractor shall not cancel such prepaid contracts without the prior approval of the Tourist Development Council. If Contractor's prepaid media or advertisement contract is not performed or satisfied for any reason, Contractor shall remit payment to the TDC within fifteen (15) days of the TDC's written demand for any previous TDC reimbursements under this Section for such prepaid media or advertisement contracts. Additionally, TDC shall have the right at its option to offset any payments owed to Contractor under this Contract by the amount of any canceled prepaid media or advertisement contracts previously reimbursed by the TDC under this Section. No Tourist Development Council funds shall be advanced to Contractor prior to Contractor rendering Services. To the extent Contractor's fees include reimbursement for travel or travel-related expenses, such travel and travel-related expenses shall be subject to and governed by the provisions and limitations of Chapter 106, Part 7, *Ordinance Code*, as may be amended. City's obligations to make payment are contingent upon availability of lawfully appropriated funds for the Services. City payments made pursuant to this Section shall be made to: Jacksonville and the Beaches Convention & Visitors Bureau, Inc., doing business as, Visit Jacksonville (the "*Payee*"). City payments to the Payee shall satisfy City's obligations to Visit Jacksonville and the Dalton Agency under this Contract. Notwithstanding any other provisions hereunder, City's obligation under this Contract for payment shall only be to the Payee. Payee agrees to reimburse the Dalton Agency from the City payments under this Contract for any Services performed by the Dalton Agency under this Contract. City shall not be liable to the Dalton Agency under this Contract for any payments to Dalton Agency or for any payments owed by Visit Jacksonville to the Dalton Agency for services performed under this Contract.

10. Annual Performance Evaluation; TDC's Right to Allocate or Reallocate Funding. The Tourist Development Council shall evaluate the Contractor's performance of the Scope of Work (the "*Annual Performance Evaluation*") in the first quarter (e.g., January-March) of each fiscal year of the Term using the performance measures contained on **Exhibit B** attached hereto, and any other performance measures mutually agreed to between the Contractor and the TDC ("*Performance Measures*"). Notwithstanding, the first Contract year, each subsequent Annual Performance Evaluation shall be based on the previous twelve month period. The Annual Performance Evaluation for the first Contract year shall be based on the months from the Effective Date through the evaluation date in the first quarter. The Tourist Development Council in its sole discretion may use the information and results of each Annual Performance Evaluation to allocate funding to the Marketing Services plan component in the proposed TDC Budget for the upcoming fiscal year and reallocate funding from the Marketing Services plan component in the second and third quarters of the current fiscal year (e.g. April-September). Contractor's under or over performance under this Contract based on the Performance Measures may affect the TDC Budget allocations to the Marketing Services plan component during the Term. Nothing in this Section shall prevent the Tourist Development Council from exercising any other rights or remedies under this Contract, including termination and suspension of work, for Contractor's failure to perform the Scope of Work or comply with any Contract terms or conditions contained herein.

11. Intellectual Property Registrations.

All trademarks created or used under this Contract shall be registered in the City's name. Within ten (10) days following the execution of this Contract, Contractor shall assign all of its right, title and interest to any existing trademarks registered in the Contractor's name as a result of having performed any services for the City under the Prior Contract. Contractor shall execute a trademark assignment in favor of the City in a form to be approved and provided by the City for all such existing City trademarks registered in the Contractor's name. Contractor shall notify the Contract Manager within fourteen (14) business days of any new trademarks Contractor desires to use under this Contract for which registration is desired that must be registered by the City and the City shall work diligently with appropriate City personnel and legal counsel to register the trademarks.

All domain names created or used under this Contract shall name the City as the registrant contact and the Contractor as the administrative contact. Within ninety (90) days of the Effective Date, Contractor shall assign all registrant contact information and provide all access codes for any existing domain names registered in Contractor's name as a result of having performed any services for the City under the Prior Contract. Contractor shall provide updated registrant information to the City to evidence Contractor's compliance with this provision. Contractor shall notify the Contract Manager within fourteen (14) business days of the registration of any new domain names Contractor registers under this Contract.

All works of content to which copyright attaches that Contractor prepares under this Contract are works for hire, to the extent that term applies, and if not, the works were prepared under Contract to the City. All works of content prepared under this Contract for which Contractor, or the City, seeks registration with the United States Copyright Office must be in the name of the City. Contractor shall notify the Contract Manager within fourteen (14) business

days of any new works of content Contractor desires to use under this Contract for which copyright registration is desired that must be registered by the City and the City shall work diligently with appropriate City personnel and legal counsel to register the copyrights. Contractor expressly agrees to and does assign all right, title, and interest in all works of content prepared under this Contract to the City for the purpose of copyright registration.

This Section 11 is supplemental to Sections 3.9 (Ownership of Works) and 3.10 (Intellectual Property) of **Exhibit E** attached hereto.

12. Use of City's Name in Business/Entity Names. By execution of this Contract, Visit Jacksonville acknowledges and agrees that City has granted Visit Jacksonville use of the name "Visit Jacksonville" and "Jacksonville and the Beaches Convention & Visitors Bureau, Inc." solely as a license right only and for the sole purpose of performing the Services under this Contract. At such time that the Contract terminates or expires, Visit Jacksonville agrees to immediately discontinue the use of the corporate name "Jacksonville and the Beaches Convention & Visitors Bureau, Inc." and the fictitious name "Visit Jacksonville" and agrees to execute all necessary documents required by the City and the Florida Division of Corporations to discontinue the use of these names. Upon termination or expiration of this Contract, Contractor shall not violate Section 601.405, *Ordinance Code*, regarding the false advertising or misuse of names to indicate City agency, nor Section 865.09, Florida Statutes.

13. Representations and Warranties. Without limiting the representations, warranties and covenants of Contractor set forth elsewhere in this Contract, as a material inducement for City to enter into this Contract, Contractor, individually Visit Jacksonville and Dalton Agency, represent and warrant to City (and unless otherwise specified, such representations, warranties and covenants are true as of the Effective Date and shall continue and be effective during the term of this Contract as if continuously reiterated) that:

(a) Visit Jacksonville is a Florida non-profit corporation duly incorporated and validly existing under the laws of the State of Florida and Section 501(c)(6) of the Internal Revenue Code. Dalton Agency is a Florida for profit corporation duly incorporated and validly existing under the laws of the State of Florida. Contractor is authorized to conduct business and is in good standing in the State of Florida. Contractor has full power and authority (including the Contractor obtaining any and all required third party consents) to execute and deliver this Contract and all documents contemplated hereby, to perform its obligations arising hereunder and thereunder, and that the Contractor's entering into this Contract will not conflict with or result in a breach of any other agreement to which the Contractor is a party. The individuals signing on behalf of Contractor have full power and authority to do so and the Contractor shall promptly deliver to the City, upon request, all documents reasonably requested by the City to evidence such authority.

(b) The making, execution and delivery of this Contract and performance of all obligations hereunder by Contractor have been duly authorized and approved by the Board of Directors of Contractor.

(c) This Contract and all documents contemplated hereby each constitute a legal, valid and binding obligation of Contractor, enforceable in accordance with their respective terms, assuming execution of the same by City.

(d) This Contract and all documents contemplated hereby do not and will not contravene any provision of the governing documents of Contractor, any judgment, order, decree, writ or injunction to which Contractor is bound, or any provision of any applicable law or regulation to which Contractor is bound. The execution and delivery of this Contract and all documents contemplated hereby, and performance of its obligations hereunder and thereunder will not result in a breach of or constitute a default under any agreement or require the consent from any third party.

(e) Contractor and each of its general contractors, subcontractors, materialmen, laborers and other persons performing the Services hold all necessary licenses, permits and authorizations required by all applicable governmental agencies and authorities as a condition to conduct business in the State of Florida and to work on the Services. Contractor shall promptly deliver to the City, upon request, all documents reasonably requested by the City to evidence such licenses, permits and authorizations.

(f) Contractor has not employed or retained any third party having a relationship with City to solicit or secure this Contract and has not paid or agreed or promised to pay any such person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Contract.

14. Joint and Several Liability. The obligations imposed upon Visit Jacksonville and the Dalton Agency under this Contract shall be joint and several and the act of or notice from, or notice or payment to, or the signature of, any one or more of each Contractor shall be binding on each Contractor with respect to the liabilities and obligations of this Contract, including, but not limited to, any renewal, extension, termination or modification of this Contract.

15. Indemnity and Insurance Requirements. Contractor shall adhere to the indemnity and insurance requirements set forth in the Marketing Services RFP and attached hereto as **Exhibit D-1** and **Exhibit D-2**, respectively.

16. Other Contract Terms. Contractor shall adhere to the General Terms and Conditions of Contract set forth in the Marketing Services RFP and attached to this Contract as **Exhibit E**.

17. No Lien Affidavit; Conflict of Interest Forms. The Contractor's executed Affidavit Regarding Payment of Taxes and Lien, the Conflict of Interest Certificate Regarding Business/Personal Relationships, and the Conflict of Interest Certificate Pursuant to Section 126.201, *Ordinance Code* (collectively, the "***RFP Forms***") included in the Response shall be ongoing and continuing representations and warranties from Contractor during the Term of this Contract. Contractor shall immediately notify the TDC of any material changes to the representations and warranties of Contractor contained in the RFP Forms and any material changes to the representations and warranties of Contractor contained in the RFP Forms shall constitute a breach of the Contract terms.

18. Contractor's Governing Documents and Board Policies. Contractor's Articles of Incorporation, Bylaws, strategic plans and board policies (collectively, "***Governing Documents***") shall not be inconsistent with the terms and conditions of this Contract during the Term. To the extent that Contractor's Governing Documents are inconsistent with this Contract, the terms and conditions of this Contract shall control and such inconsistent provisions in the Governing Documents shall be void and of no effect..

19. Contract Documents. The Marketing Services RFP, this Contract and any subsequent amendments hereto, and the Response (as modified and accepted by the City) (collectively, the “*Contract Documents*”) are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with tourism promotion industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the more specific provision rather than the general provision contained in the Contract Documents shall control. The Contract Documents form the entire agreement between City and Contractor by incorporation herein and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties on which any party is entitled to rely upon and enforce against the other party except as specifically stated in the Contract Documents.

20. Notices. Any notice required or permitted by this Contract shall be given to the following representative of each party at the address set forth below, by hand delivery, by registered or certified mail, return receipt requested, by overnight mail or courier service, signed acknowledgment of receipt required. Notice shall be deemed as given on the day of receipt of the notice or communication, as indicated on the signed and dated receipt or acknowledgment, or on the date of hand delivery:

As to the City:

Duval County Tourist Development Council
117 West Duval Street, Suite 425
Jacksonville, FL 32202
Attn: Executive Director
(904) _____
(904) _____
Email: _____

As to Visit Jacksonville:

Jacksonville and the Beaches Convention & Visitors Bureau, Inc.
dba Visit Jacksonville
208 N. Laura St.
Jacksonville, FL 32202
Attn: Chief Executive Officer
(904) _____
(904) _____
Email: _____

The Dalton Agency, Inc.
140 West Monroe Street, Suite 200
Jacksonville, FL 32202
Attn: President
(904) _____
(904) _____
Email: _____

21. **Contract Managers.** Each party will designate a Contract Manager during the Term whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, City's Contract Manager is Annette Hastings, 117 West Duval St., Suite 425, Jacksonville, FL 32202 and Visit Jacksonville's Contract Manager is Paul Astleford, CEO, Visit Jacksonville, 208 N. Laura St., Jacksonville, FL 32202; and the Dalton Agency's Contract Manager is Brian Kinkade; 140 West Monroe Street, Suite 200, Jacksonville, FL 32202. Each party shall provide prompt written notice to the other party of any changes to the party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

22. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the Contractor. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. Contractor acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

23. **Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

24. **Counterparts.** This Contract, and all amendments thereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Remainder of page left blank intentionally. Signature page follows immediately.]

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

CITY:

ATTEST:

CITY OF JACKSONVILLE

By _____
James R. McCain, Jr.
Corporation Secretary

By _____
Lenny Curry
Mayor

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and un-impounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance
CITY Contract Number: _____

Form Approved:

Office of General Counsel

CONTRACTOR:

**JACKSONVILLE AND THE BEACHES
CONVENTION & VISITORS BUREAU, INC.**
doing business as **VISIT JACKSONVILLE**

By: _____

Print Name/Title: _____

Dated: _____

THE DALTON AGENCY, INC.

By: _____

Print Name/Title: _____

Dated: _____

EXHIBIT A – Scope of Work

I. Marketing Services and Tourist Development Plan Requirements.

The Contractor shall market existing tourist-oriented facilities, attractions, activities and events in accordance with Section 666.108(b)(2), *Ordinance Code*. The Marketing Services to be performed by Contractor hereunder shall consist of name branding, market targeting, audience targeting, targeting direct flight markets, establishing and maintaining a website, social media sites and digital advertising, visitor magazine, media relations, maps, topic specific brochures and videos, and collection of brochures, videos, etc. The Tourist Development Plan provides a minimum budget of \$2,300,000 for this component, and the budget for Fiscal Year 2017-2018, and future years, may be increased or decreased subject to the approval of the Tourist Development Council, appropriation by Jacksonville City Council in the annual budget process, and the availability of funds.

During the Contract term the Contractor shall perform the Marketing component services described in Section 666.108(b)(2), *Ordinance Code*, as amended, of the Tourist Development Plan, which provides as follows:

(2) Marketing of existing tourist-oriented facilities, attractions, activities and events, located or occurring within the City, and identified in Plan component (1) above through advertising and marketing campaigns as described below. This component shall require the marketing of existing tourist-oriented facilities, attractions, activities and events identified in Plan component (1) above through advertising and marketing campaigns conducted outside the City, regionally, nationally and internationally and through the maintenance of a website, publication of an annual visitor magazine, and publication or production of brochures, maps, videos and similar materials for distribution at Visitor Centers and tourist facilities. Within the overall funding allocation for this component (2), adequate funding shall be set aside annually for subparts (v), (vii), (ix) and (x) to perform the activities in each such subpart of this component. The marketing services to be provided under this component shall include, without limitation, the following advertising, tourist engagement strategies and marketing services:

(i) *Name branding.* Branding of Jacksonville as a unique destination focusing on our waterways, beaches, and parks and opportunities for outdoor adventure; the City's extraordinary cultural and historical resources; and the City's passion for sports by showcasing the City's numerous sporting events and teams at all levels (culinary destination, ale trail, and medical tourism may be included in the branding but shall not be a primary focus area of the branding plan);

(ii) *Market targeting.* Target markets based on study data and past tourist tracking;

(iii) *Audience targeting.* Target audiences of the destination branding attributes identified in (i) above, with advertising and promotions, also including (a) Jacksonville Jaguars and other professional sports teams' opponents around away game cities and grow out of town visitation for home games, and local

leisure tourism by targeting opponent's cities, and (b) audiences based on activities unique to the area and that attract large numbers of tourists (i.e. golf, beaches and watersports, etc.); and

(iv) *Targeting direct flight markets.* Coordination with Jacksonville Aviation Authority to advertise in direct flight markets.

(v) *Website.* The establishment and maintenance of a continually updated website as the official tourist website for the City. Such website shall contain comprehensive and all-inclusive listings of all existing tourist oriented facilities, attractions, activities and events identified in (1) above. While accommodations and restaurants are recognized as essential to the tourist experience, equal emphasis shall be given to things to do and see in the City. Such listings shall be all-inclusive and may not show preference to, or otherwise emphasize, any particular event or service provider. Listings shall be sortable by business type/special interest category. Individual locations, venues and activities may be featured in specific content articles and itineraries but based on consumer interest ratings, or recognized tourist attraction rating entities and not on any request or payment by the entity advertised. If out of City day trips are promoted through such website, contributions from the jurisdictions in which such facilities are located shall be negotiated and used to offset the expense of publication. In no event shall the primary focus of any local webpage be devoted to out of City activities, venues, or services unless paid for by such jurisdiction;

(vi) *Social media sites and digital advertising.* The maintenance of social media sites which shall include links to, excerpts from, and mirror the material contained in the website above. Individual locations, venues, and activities may be featured in specific content articles and itineraries but based on consumer interest ratings, or recognized tourist attraction rating entities and not on any request or payment by the entity advertised. This subpart shall also include online digital advertising to targeted markets of the destination branding attributes identified in (i) above;

(vii) *Visitor magazine.* The publication of a Visitor Magazine no less often than annually which shall also include the comprehensive listings described above. Individual locations, venues, and activities may be featured in specific content articles and itineraries but based on consumer interest ratings, or recognized tourist attraction rating entities and not on any request or payment by the entity advertised. If out of City day trips are promoted through such Visitor magazine, contributions from the jurisdictions in which such facilities are located shall be negotiated and used to offset the expense of publication. In no event shall the primary focus of any publication be devoted to out of City activities, venues, or services unless paid for by such jurisdiction;

(viii) *Media Relations.* Promotion of the City's tourist related facilities and programs on a state, national and international level to media writers of magazines, newspapers, blogs, websites and other public relations oriented outlets;

(ix) *Maps.* The publication of maps on the website and in print identifying running routes/trails; bicycling tour routes; scenic walks; historic walking tours;

tourist attraction and activity locations; public docks, boat ramps, non-motorized launches and waterfront facilities accessible to those on the water such as restaurants with docks, etc.;

(x) *Topic specific brochures and videos.* The publication of other topic specific brochures and videos, such as brochures and videos focused on water related activities and parks and outdoor adventures, area history trails and brochures or other types of businesses if expressly requested by and deemed appropriate by the Tourist Council; and

(xi) *Collection of brochures, videos, etc.* The collection and distribution of brochures, videos, and other advertising prepared by existing tourist oriented facilities, attractions, activities, and events at all visitor centers, kiosks, and such other opportunities as may arise.

The phrase “Plan Component 1” as used in the above excerpt from Section 666.108(b)(2), Ordinance Code, refers to the Tourist Bureau Component. Contractor shall strictly adhere to Chapter 666, Ordinance Code, and the Tourist Development Plan provided therein, as may be amended.

II. Additional Deliverables to be Provided by Contractor.

In addition to the services and deliverables identified in Section I above, the Contractor shall provide and adhere to the following deliverables and contract requirements in the subsections listed below during the Contract term.

A. Marketing Services.

Contractor shall provide or cause to be provided advertising, marketing and promotional services for existing tourist-oriented facilities, attractions, activities or events identified by the official Tourist Bureau located or occurring within the City so as to attract tourists on a state, regional, national and international scale. Contractor’s advertising and marketing campaigns should involve printing of brochures and other informational material; radio, television, newspaper and magazine advertisements; video production; outdoor advertisements; promotional materials regarding tour guide or sightseeing services; a hotel-motel directory including a map and food service information; an exhibit to be a part of the State of Florida exhibit; package tours and information on travel agents and tour operators; and a market analysis to determine the areas in which tourist-oriented advertising and promotion will be most effective. Contractor shall provide the City’s contractor performing the Tourist Bureau Services (the “City TB Contractor”) described in Section 666.108(b)(1) with marketing, promotional and advertising materials necessary to perform the Tourist Bureau Services described in Section 666.108(b)(1), Ordinance Code (e.g., the City TB Contractor’s use, distribution and display of materials in the visitor centers and visitor kiosks). Contractor shall provide the Tourist Development Council on an annual basis with a list of all new brochures, videos, maps, etc. planned for the coming year and an actual list of the brochures, videos, maps, etc. for the prior year. Contractor shall regularly and as needed identify marketing research needs and deficiencies in tourist attractions and services to the Tourist Development Council and recommend and prioritize research studies,

projects or reports to be undertaken by the TDC. Contractor's digital kiosk content and appearance must be approved by the Tourist Development Council prior to implementation.

B. Website Services.

Contractor shall direct the creative process for maintaining the existing tourism website for the City. For purposes of this Attachment and the Contract, "website" means www.visitjacksonville.com, or such other website as designated by the Tourist Development Council, including without limitation, all subpages and internal webpages linked by way of domain names, and any other domain names as approved by TDC. Such website shall contain searchable databases of all existing tourist facilities, events and attractions, and listings shall be maintained electronically and sortable by geographic area, subject matter areas of interest, and "star" rating as to hotels, restaurants, etc. The website shall be regularly maintained and content on the tourism website continuously updated to insure that information is current and accurate reflecting any changes no less often than weekly. The website shall contain links to reservation services, ticket sales, tours, etc. The website may promote and highlight events and attractions of special interest but no partnership arrangements or payments may be accepted in order to receive feature promotions or special recognition. The site shall be designed to serve actual and prospective visitors and to showcase the widest possible array of tourism opportunities available to those who may visit the City. TDC shall own all IP addresses, as provided in Section 3.9 of the Marketing Services RFP. Contractor in creating and maintaining the website hereunder will use the comprehensive listings and assembled information provided by the City Tourist Bureau Agency, and Contractor will coordinate with the City Tourist Bureau Agency in obtaining such listings and assembled information. Contractor shall provide the Tourist Development Council with mock-ups/alternatives for new website designs prior to implementation of such design.

C. Media Relations.

Contractor shall maintain a pro-active on-going relationship with appropriate consumer and trade media to develop business for the City's business and recreational offerings. This activity shall be separately identified in the Annual Approved Budget.

D. Social Media Sites and Digital Advertising.

Contractor shall acquire and maintain social media names and pages on websites such as Facebook and Twitter, and any other now existing or later developed internet websites and applications as Contractor considers reasonable to maintain an active, current social media presence. Contractor shall acquire or contract with or develop a tourism mobile app for the City.

E. Visitor Magazine.

Contractor shall produce at least annually a printed Visitor's Guide for distribution at Visitor Centers and kiosks, the Florida Welcome station and various tourist facilities unless an alternative visitor guide strategy has been approved in advance by the Tourist Development Council as part of the Annual Marketing Plan required under this Contract.

F. Coordination with City agencies and other entities.

Contractor shall coordinate marketing efforts with the City's Office of Economic Development, the City's Office of Sports and Entertainment, the City's Department of Parks and Recreation, the local governments of each of the Beach communities, the Downtown Investment Authority, JAXUSA, and any parties performing services under other contracts with the Tourist Development Council. The Contractor shall maintain a close relationship with Visit Florida and other parties, if any, performing services for the Tourist Development Council, in order to maximize all opportunities for joint promotion/press trips/individual writer visits/social media, etc. The Contractor shall maintain a close relationship with the Chamber of Commerce, JAXUSA, Jax Sports Council, to include any assistance that may be required in those entities promotional efforts.

G. Coordination of Promotional and Public Relations.

Contractor shall coordinate promotional and public relations efforts for other marketing activities including signature special events that have a high return on investment (ROI) for bringing visitors to the City.

H. Service Enhancements.

Contractor shall perform the additional service enhancements contained in Contractor's Response as accepted or amended by the City at the time of the contract award (collectively, the "Service Enhancements"). The Service Enhancements are incorporated herein by reference.

I. Marketing and Advertising Campaigns. Contractor must obtain prior approval from the Tourist Development Council of each new marketing and advertising campaign and its associated budget, goals, and evaluation metrics prior to implementing such campaign. Each marketing and advertising campaign proposed by the Contractor for TDC review and approval shall be consistent with the Comprehensive Marketing Plan and the Annual Marketing Plan.

J. Financial Audit.

The Contractor shall provide for an annual financial audit of the contract and Tourist Development Council funded accounts, together with an accounting of any outside funds received and their source (i) if any of such funds are used to offset the cost of providing any of the services provided under the Marketing Services RFP; or (ii) if any such funds are used to provide a service in partnership or cooperation with other jurisdictions or entities.

K. Reporting and Attendance at Tourist Development Council Meetings.

Contractor shall prepare a quarterly report to be presented in writing to the Tourist Development Council, and in person at each regularly scheduled Tourist Development Council meeting describing all marketing promotional and advertising activities conducted in the prior quarter, by month. In addition, such report shall include copy and market targets for all digital advertising, including impressions, click throughs, and evidence of impact. The report shall include clippings of all media placements with the ad value derived from the story including

circulation, as well as clippings of all earned media and samples of any other promotion, marketing, or advertising material prepared in the preceding quarter, its distribution, value and should include the click through data and market characteristics.

Additionally, Contractor shall prepare a quarterly report comparing the number of leisure visitors by month to the same month in the prior three years. If a particular event or factor was a significant contributing factor in the increase or decrease, please explain and if necessary, extend the time period covered by the report to address such impact. In such report, identify the correlation and direct impact of any marketing campaign that promoted a particular event to the increase in leisure tourism that resulted. If a particular campaign does not achieve demonstrable results, explain the criteria that will be used to determine its continuance. All such reports shall be in writing. On no less often than an annual basis, Contractor shall provide the Tourist Development Council with a written report on the status of coordination efforts with each of the above, any obstacles or challenges encountered, and offer suggestions for better coordination in the future. All such reports and updates required in this subsection shall be in writing.

Contractor shall attend all regular Tourist Development Council meetings and, upon request, any special Tourist Development Council meetings.

L. Support Services.

The Contractor shall provide support services and follow-up services for the Tourist Development Council with respect to events, projects or activities approved by the Tourist Development Council when requested to do so by the Tourist Development Council and which are part of the plan element identified above, provided the request does not exceed the approved budget for such services.

M. Travel Policy.

Contractor shall adhere to the Travel Policy set forth in Chapter 106, Part 7, *Ordinance Code*, as amended, and incorporated herein by reference. Contractor shall not be reimbursed for any travel expenses, including parking, associated with travel to and from Tourist Development Council and City Council meetings. Contractor shall not be reimbursed expenses for meals or entertainment with Tourist Development Council members, City Council or City employees. The Tourist Development Council shall develop guidelines regarding the reimbursement of travel expenses within the City. In no event shall Contractor's permitted travel expenses under this Section exceed the allocated amount for travel contained in Contractor's Approved Annual Budget.

N. Sunshine and Public Records Requirements.

Contractor acknowledges that the Contract and any records related thereto are subject to Florida's Public Records Law.

O. Required Subscription; Use of Reports.

City shall subscribe to the Longwood Travel USA Jacksonville Visitor Report (the “*Longwood Report*”) during the Contract term. Any subscription fees related thereto shall not be included in Contractor’s annual budget approved by the Tourist Development Council. The TDC may use the Longwood Report to evaluate the Contractor’s performance under this Contract.

P. Sponsorships; Grants Prohibited.

Contractor may accept funds, donations or payments from third-party sponsorships or organizations to assist with offsetting any expenses related to Contractor’s participation in tourism industry related events and activities. Contractor’s participation in such tourism industry related events and activities shall be approved by the Tourist Development Council and Contractor’s participation in such events shall be all-inclusive and may not show preference to or other emphasize any particular event, service provider or third-party sponsor. Third-party sponsors or organization shall not be entitled to exclusive promotions or preferences during such tourism industry related events above such third-party sponsor or organization’s pro-rata costs. Payments from third-parties under this Section shall be made payable to the City of Jacksonville c/o Duval County Tourist Development Council. Contractor shall forward all such third-party payments to the Contract Manager to be deposited into the appropriate City account and used in accordance with Chapter 666, *Ordinance Code*. Contractor may not award grants or provide sponsorships to third parties or third party events under this Contract unless approved by the TDC as an advertising or marketing campaign in the Annual Approved Budget under this Contract.

Exhibit B
Performance Measurements

The Tourist Development Council shall use the following performance measures to evaluate Contractor's performance under this Contract. The Tourist Development Council in its sole discretion shall weight each of the performance measures below in the Annual Performance Evaluation as it deems appropriate.

I. Overall Contract Performance Measures. Contractor's satisfactory performance under this Contract shall be directly tied to following overall objective performance goals and measures listed below for each year during the Contract term:

- An annual five percent (5%) increase in the leisure market visitors/tourists as determined by the Longwood Travel USA Jacksonville Visitor Report*;
- An annual five percent (5%) increase in total tourist development tax collections; and
- A ten percent (10%) annual increase in website traffic to the City's official tourism website.

II. Specific Marketing and Advertising Campaigns. For specific TDC approved marketing and advertising campaigns, Contractor's satisfactory performance under this Contract shall be directly tied to goals and metrics presented by the Contractor and approved by the Tourist Development Council at the time of Contractor's specific marketing and advertising campaign requests. Additionally, Contractor's performance for marketing and advertising campaigns will be based on quarterly reports provided by Contractor that will include data number of people, geography and information source, as well as certain key adult segments to be designated by the TDC. Contractor's performance metrics for the specific campaign types listed below shall include at a minimum the following performance metrics for each campaign type:

<u>Campaign Type</u>	<u>Performance Metrics</u>
Display	Impressions; Clicks; Click-through rate.
Video	Video views; Video completion rate.
Native	Content views; Time spent with content; Clicks; CTR.
Paid Social	Clicks; CTR; Video views; Engagements.
SEM	Clicks; CPC; Average position; Top performing keywords.

*The Longwood Travel USA Jacksonville Visitor Report is one year behind in data.

Exhibit C
PAYMENT REQUEST FORM

Name: _____

 Address: _____
 Jacksonville, FL 32202
 Phone# (904) _____
 Tax ID #: _____

Request # _____
 Contract # _____
 Date Submitted _____

1. Contract funds received to date: \$ _____
2. Contract funds disbursed to date: \$ _____
3. Contract funds previously requested but not yet received: \$ _____
4. Amount of this request \$ _____

If line 2 does not equal line 1, please explain: _____

Line Item & Description	Budget	Amount Received to Date	Amount of this Request	Remaining Balance
TOTAL	\$0	\$	\$	\$

Comments: _____

Bank: _____ Account # _____

I certify that the data reported above is correct and the amount of the cash requested does not exceed current needs.

Signed: _____

Print Name: _____

Title: _____

Exhibit D-1 – Indemnity Requirements

Contractor and its subsidiaries (collectively, the “Indemnifying Parties”) shall (and shall require all subcontractors of any tier to) hold harmless, indemnify, and defend the consolidated government of the City of Jacksonville, Florida, exercising its powers as a county (“City”) and City’s members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, loss of personal information, or personally identifiable information (PII), whether arising out of or incidental to the Indemnifying Parties’ performance of the Contract, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

3. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to City, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Contract, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full

force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

Exhibit D-2 – Insurance Requirements

Without limiting its liability under this Contract, Contractor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker’s Compensation Employer’s Liability	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops.
	Agg.	
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City’s Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability	\$1,000,000	Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)		

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability
(Including Media Professional)

\$1,000,000 per Claim and Aggregate

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

Additional Insurance Provisions

- A. **Additional Insured:** All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- C. **Contractor's Insurance Primary.** The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- D. **Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
- E. **Contractor's Insurance Additional Remedy.** Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its Subcontractors, employees or agents to the City or others. Any remedy provided to the City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- F. **Waiver/Estoppel.** Neither approval by City nor failure to disapprove the insurance furnished

by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.

- G. **Certificates of Insurance.** Contractor shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. **Carrier Qualifications.** The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. **Notice.** The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not available then the Contractor, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. **Survival.** Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. **Additional Insurance.** Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. **Special Provisions:** Prior to executing this Agreement, Contractor shall present this Contract and Attachments I & J to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Contract Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Exhibit E
Other Contract Terms and Conditions

3.1. Provision of Services. A Contractor shall provide City with all of the services and deliverables described in the Marketing Services RFP for the Marketing Services Plan Component, the Response and this Contract. If any services, functions or responsibilities are not specifically described in the Marketing Services RFP, the Response or this Contract but are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein.

3.2. Relationship of the Parties. In performance of the Services, Contractor shall be acting in the capacity of an independent contractor and not an employee, partner, joint venture or associate of City. Contractor shall be solely responsible for the labor, supplies, materials, means, methods, techniques, sequences and procedures utilized to perform the Services in accordance with the Contract. This Contract is for the benefit of Duval County and the Tourist Development Council. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Contract.

3.3. City's Right to Make Changes. City may unilaterally require, by written order, changes altering, adding to, or deducting from the Services ("Changes"), provided that such Changes are within the general scope of the Contract. City will make an equitable adjustment in the Contract price or delivery date if the Change materially affects the cost or time of performance. Such equitable adjustments require the written consent of Contractor, which shall not be unreasonably withheld. The Parties will cooperate with each other in good faith in discussing the scope and nature of the Change, the availability of Contractor personnel, the expertise and resources to provide such Change, and the time period in which such Change will be implemented.

3.4. Service Warranties. Contractor warrants that the Services shall be performed and delivered in a professional, first-class manner in accordance with the Contract and the standards prevailing in the industry. Contractor shall also undertake the following actions without additional consideration during the term of the Contract and for one year thereafter: (i) promptly making necessary revisions or corrections to resolve any errors and omissions on the part of Contractor; and (ii) conferring with City for the purpose of interpreting any of the Services or information furnished. Acceptance of the Services by City shall not relieve Contractor of these responsibilities. The warranties and covenants in this paragraph will extend to all subcontractors as well.

The foregoing warranties and covenants shall not apply (i) with respect to any portions of the Service that have been produced by anyone other than Contractor or its subcontractors; (ii) to any modifications made by anyone other than Contractor or its subcontractors or without Contractor's specific prior written consent; or (iii) to any use of the Service in a manner or for any purpose other than those contemplated in the Contract. **EXCEPT AS EXPRESSLY STATED IN THE CONTRACT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES**

**REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
CONTRACTOR'S WARRANTIES EXTEND SOLELY TO CITY.**

3.5. City Will Assist Contractor. At Contractor's request, City will provide reasonable assistance and cooperation to Contractor, including the supply of any data and information necessary for Contractor to provide the Services. City will also designate a Contract Manager who will, on behalf of City, work with Contractor and administer the Contract in accordance with its terms.

3.6. Location Requirements for Services. See Section 4-2 of the Marketing Services RFP for restrictions regarding the Contractor's location requirements for the performance of Services. These restrictions may be modified in writing if City determines, in its sole discretion, that the restrictions impose an undue burden on Contractor's ability to perform the Services as contemplated in the Contract.

3.7. Use of Subcontractors; Flow-Down Provisions. Except to the extent the use of subcontractors is disclosed in the Response or consented to in writing by City, Contractor shall not be allowed to subcontract or assign any of its duties and obligations hereunder. In all cases, Contractor will be responsible for the acts or omissions of its subcontractors. Contractor will ensure that all relevant contractual obligations will flow down to the subcontractors and will be incorporated into the subcontracts (including the obligations relating to insurance, indemnification, delays, intellectual property rights, public records, non-discrimination, audits, security, location of services, termination, transition assistance, warranties, and the manner in which the Services are to be performed).

3.8. Meetings and Reports. Contractor must attend all regularly scheduled Tourist Development Council meetings and, upon request by the City, any special Tourist Development Council meetings. Additionally, Contractor must attend all meetings and public hearings relative to the Services where its presence is determined to be necessary and requested by City and Contractor can reasonably schedule its appearance. Contractor shall provide a written monthly report summarizing Contractor's performance and any deliverables that Contractor is required to report or update the TDC on as required in Section 4-2 of the Marketing Services RFP. Contractor shall provide other periodic written or oral reports respecting the Services as City reasonably requests.

3.9. Ownership of Works.

(a) As used in Sections 3.9 and 3.10, the term "Work" shall mean each deliverable, drawing, design, specification, rendering, notebook, tracing, photograph, reference book, equipment, expendable equipment and material, negative, report, finding, recommendation, service mark or trademark, domain name, uniform resource locator (URL), internet protocol (IP) address, social media name and page, data, database, and memorandum of every description, shared with or delivered to City pursuant to the Contract.

(b) With the exception of Contractor's pre-existing intellectual property and third-party intellectual property as described in Section 3.10 below, City shall from inception own all

right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to each Work including, but not limited to, software, source code, mobile and desktop resident applications, reports, deliverables, domain names, uniform resource locators, internet protocol addresses, social media pages and postings, website login information, trademarks, service marks, fictitious names, patentable items and patents, later developed types and forms of tangible or intangible matter, and other work product developed by Contractor specifically for City in connection with the Contract, and all derivative works relating to the foregoing. The use of these Works in any manner by City shall not support any claim by Contractor for additional compensation. Contractor shall provide City with high quality digital copies capable of reproduction of all Work.

(c) Any software, report, deliverable, or work product as used in connection with a Work, but previously developed by Contractor specifically for other customers of Contractor or previously developed for the express purpose of providing substantially similar services to other Contractor customers, generally shall be considered a "pre-existing work", so long as the foregoing are not first conceived of or reduced to practice as part of any Work. All Works developed under the Contract exclusive only of Contractor's pre-existing work or permitted third-party intellectual property are the property of City, without further consideration or the need for a separate document assigning ownership. Notwithstanding the foregoing, Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as City may reasonably request, to perfect or evidence City's ownership of the Work. Contractor hereby appoints City as Contractor's attorney-in-fact for the purpose of executing any documents or taking any other actions to effect City's ownership of each Work.

(d) Contractor will coordinate with City with respect to all uses, potential registrations, and registrations of all service marks, trademarks, trade dress, copyrights, patents, domain names, uniform resource locators, websites, webpages, social media accounts, later developed social media platforms and methods developed under the Contract to ensure City's ownership of the foregoing.

3.10. Intellectual Property.

(a) City grants to Contractor a royalty free and fully paid-up license to use (and such license includes a right to copy, modify and create derivative works from the subject matter of the grant) for the purpose of providing services under the Contract to City, any authorized subdivision or affiliate of City, or any third-party subject to City having provided prior express written consent to the third-party's use of the material at issue. Contractor's license and right to use any of the Works shall run concurrently with the term of the Contract. The extent of Contractor's right to sublicense any Work is limited to Contractor's performance under the Contract.

(b) If the Work contains, has embedded in, or requires for the use of, any third-party intellectual property, or if the third-party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work, Contractor shall secure for City an irrevocable, perpetual, royalty free and fully paid-up right to use all third-party intellectual property. Contractor shall secure such right at its expense and prior to incorporating any third-party intellectual property (including, without limitation, all trade

secrets, patents, copyright and know-how) into any Work, including, without limitation, all drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third-party service provider. This subparagraph does not apply to standard office software (e.g., Microsoft Office).

(c) Should City, or any third party obtaining such Work through City, use the Work or any part thereof for any purpose other than that which is specified in the Contract, it shall be at City's and such third party's sole risk.

3.11. Software Development Processes and Standards. To the extent any software is developed, modified, or otherwise procured under the Contract, Contractor will use commercially-accepted software development and documentation processes and standards.

3.12. Limitation of Warranty for City-Furnished Software. In lieu of any other warranty expressed or implied herein, City warrants that any programming aids and software packages supplied for Contractor use as City-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by City from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s). Should City furnish Contractor with any programming aids or software packages that are found not to be suitable for their intended use on the system(s) for which designed, Contractor shall notify City and supply documentation regarding any defects and their effect on progress on the Contract. City will consider equitably adjusting the delivery performance dates or compensation, or both, and any other contractual provision affected by the City-furnished property in accordance with the procedures provided for in Section 3.3 above ("City's Right to Make Changes").

3.13. Loss of Data. If any City data or record is lost or corrupted due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for correcting and recreating all production, test, acceptance and training files or databases affected which are used in the provision of services, at no additional cost to the Customer in the manner and on the schedule set by City. This remedy shall be in addition to any other remedy City may be entitled to by law or the Contract.

3.14. Purchase Orders. If the Contract requires a Service to be ordered by City via purchase order, Contractor shall not deliver or furnish the Service until a City transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by City directly with Contractor, and shall be deemed to incorporate by reference the Contract. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to City.

3.15. Best Pricing for Comparable Services to Other Government Entities. Compensation for the Services shall be as set forth in the Contract. During the Contract term, if Contractor offers better pricing to other government entities for substantially the same or a smaller quantity of Services upon the same or similar terms of the Contract ("Better Pricing"), then the price

under the Contract shall be immediately reduced to the better price. City may require Contractor to certify on an annual basis that Better Pricing (as defined above) does not exist.

3.17. Taxes. City is generally exempt from any taxes imposed by the State of Florida or the Federal Government. Exemption certificates will be provided upon request. Contractor shall not include any state, local and federal taxes in any prices quoted to City.

3.18. Right of Setoff. City may, in addition to other remedies available at law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted in good faith by City (or any other local government entity or authority located in Duval County, Florida) against Contractor.

3.19. Retention of Records / Audits.

(a) Contractor must establish and maintain books, records, contracts, sub-contracts, papers, financial records, supporting documents, statistical records and all other documents pertaining to the Contract (collectively, the "Records"), in whatsoever form or format (including electronic storage media) is reasonable, safe and sufficient.

(b) Contractor must retain all Records for a minimum period of three (3) years after the final payment is made under the Contract. If an audit has been initiated and audit findings have not been resolved at the end of the three (3) year period, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the Contract, at no additional cost to City. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

(c) At all reasonable times for as long as the Records are maintained, Contractor must allow persons duly authorized by City (including City's auditor and inspector general offices), and to have full access to and the right to examine, copy or audit any of the Records, regardless of the form in which kept. Contractor will not charge City for any setup, supervision or space in connection with the examination and audit. Photocopying charges will not exceed the actual and reasonable cost of the copies to Contractor, and City shall be permitted to bring its photocopying equipment if City so desires.

(d) Contractor must comply with and cooperate in any audits or reports requested by City, and must ensure that all related party transactions are disclosed to the auditor.

(e) Contractor must permit City to interview any of Contractor's employees, subcontractors and subcontractor employees to assure City of the satisfactory performance of the terms and conditions of the Contract. Unless the parties agree otherwise or City is willing to pay for the employee's reasonable travel expenses, the interviews will be conducted at the employee's primary place of work. Contractor will not charge City for any employee time unless the interview time for that employee exceeds eight (8) hours in a calendar year.

(f) Following any audit or review, if performance of Contractor is, in the opinion of City, deficient, City will deliver to Contractor a written report of the deficiencies and request for development by Contractor of a corrective action plan. Contractor hereby agrees to prepare and submit, to City, said corrective plan within ten (10) days of receiving City's written report. Thereafter, Contractor must correct all deficiencies in the corrective action plan within a reasonable time after City's receipt of the corrective action plan.

(g) All reports and other information provided by Contractor pursuant to this Section shall be submitted under penalties of perjury, under Section 837.06, Florida Statutes.

(h) Contractor must include the aforementioned audit, inspection, investigation and record-keeping requirements in all subcontracts and Contract assignments.

(i) Contractor agrees to reimburse City for the reasonable costs of investigation incurred by City for audits, inspections and investigations that uncover a material violation of the Contract. Such costs shall include the salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. Contractor shall not be responsible for any costs of investigations that do not uncover a material violation of the Contract.

3.20. City's Right to Suspend Work. City may in its sole discretion suspend any or all activities under the Contract by providing a written notice to Contractor at least five (5) days in advance that outlines the particulars of suspension. Within ninety (90) days of providing such notice, or within any longer period agreed to by Contractor, City shall either (1) authorize the resumption of work, at which time activity shall resume, or (2) terminate the Contract in accordance with the applicable termination provisions. Suspension of work shall not entitle Contractor to any additional compensation. The parties will reasonably amend any schedules relating to performance of the Services to reflect the suspension of work hereunder. Contractor shall not be entitled to receive compensation for any work it performs after being excused from providing it hereunder.

3.21. City's Right to Terminate for Convenience. City reserves the right to terminate the Contract or any of its components at any time and for any reason by giving written notice to Contractor. If the Contract is terminated for convenience as provided herein, City will be relieved of all further obligations other than payment for that amount of Services actually performed to the date of termination, which shall include any TDC approved and unpaid obligation of Contractor made by Contractor pursuant to this Contract. Upon expiration or termination of this Contract, Contractor shall execute an assignment of contract in a form approved by the City assigning to the TDC all Contractor's right, title and interest in any TDC approved contracts executed by Contractor. Access to any and all work papers will be provided to the District after the termination of the Contract. The parties understand and agree that Contractor shall not have a reciprocal right to terminate the Contract for convenience; it being understood that City's payment for Services forms the consideration for Contractor not having this right. In the event of City's termination of the Contract, City (in its sole discretion) may also require Contractor to provide the Transition Services as set forth in Section 3.26 below.

3.22. City's Remedies Upon Contractor Default. Any one or more of the following events, if not cured within ten (10) calendar days after Contractor's receipt of written notice thereof, shall constitute an "Event of Default" on the part of Contractor: (1) Contractor fails to perform the Services in accordance with the Contract terms, (2) Contractor fails to maintain adequate progress, thus endangering performance of the Contract, (3) Contractor fails to honor any other material term of the Contract, or (4) Contractor fails to abide by any statutory, regulatory, or licensing requirement. City may extend the 10-day cure period in its discretion.

In addition, the following shall constitute an immediate Event of Default with no right cure: (i) Contractor is found to have made a false representation or certification in its Response, or (ii) Contractor has been placed on the list maintained under Section 287.135, Florida Statutes, of companies with activities in Sudan or in Iran Petroleum Energy Sector.

Upon an "Event of Default" on the part of Contractor, City will be entitled to terminate the Contract and pursue such other remedies available at law or equity, including the recovery of any procurement costs and delay damages. The rights and remedies available to City under the Contract are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience.

3.23. Contractor Remedies Upon City Default. City shall be in default if City fails to honor any material term of the Contract, and such failure is not cured within forty-five (45) calendar days after receipt of written notice thereof from Contractor. In the event of City's default, Contractor will be entitled to terminate the Contract and pursue such other remedies available at law or equity as it deems appropriate. **Except as expressly provided elsewhere in the Contract, Contractor will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to Contractor under the Contract are distinct, separate and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

3.24. Transition Services. At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), City may request Contractor to provide reasonable transition assistance services ("Transition Assistance"). Contractor shall provide such Transition Assistance until such time as City notifies Contractor that City no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service provider (either City itself or a third party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by City, those third parties shall cooperate with

Contractor in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Contractor.

Transition Assistance rendered before the Termination Date shall be provided at no additional cost to City. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Contractor charges to government entities for comparable services; provided however, that if City terminates the Contract because of a breach by Contractor, then (i) the Transition Assistance shall be provided at no cost to City, and (ii) City will be entitled to any other remedies available to it under law. Contractor may withhold Transition Assistance after the Termination Date if City does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Contractor in accordance with the invoicing and payment provisions of the Contract.

3.25. Force Majeure, Notice of Delay, and No Damages for Delay. Neither party shall be responsible for delays in performance if the delay was beyond that party's control (or the control of its employees, subcontractors or agents). Contractor shall notify City in writing of any such delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date Contractor first had reason to believe that a delay could result. Based upon such notice, City will give Contractor a reasonable extension of time to perform; provided, however, that City may elect to terminate the Contract in whole or in part if City determines, in its sole judgment, that such a delay will significantly impair the value of the Contract to City. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** No claim for damages, other than for an extension of time, shall be asserted against City. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

3.26. No Waiver. The delay or failure by a party to exercise or enforce any of its rights under the Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. Unless otherwise agreed in writing, City's payment for the Services shall not release Contractor of its obligations under the Contract and shall not be deemed a waiver of City's right to insist upon strict performance hereof.

3.27. Qualification of Contractor Employees, Subcontractors, and Agents. All Contractor employees, subcontractors and agents performing work under the Contract shall be properly trained and qualified. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors and agents performing work under the Contract must comply with all reasonable administrative requirements of City and with all controlling laws and regulations relevant to the services they are providing under the Contract.

City may conduct, and Contractor shall cooperate in, a security background check or other assessment of any employee, subcontractor or agent furnished by Contractor. City may refuse access to, or require replacement of, any personnel for reasonable cause.

Contractor shall take all actions necessary to ensure that Contractor's employees, subcontractors and agents are not considered employees of City. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than City.

As a condition to providing services to City, Contractor (and any subcontractor) will enroll and participate in the federal E-Verify Program within thirty days of the effective date of the Contract. Proof of enrollment and participation will be made available to City upon request.

3.28. Security Procedures. Contractor and its employees, subcontractors and agents shall comply fully with all generally applicable security procedures of the United States, the State of Florida, including without limitation Section 501.171, Florida Statutes, and City regarding the security of personal information and personally identifiable information (PII) in performance of the Contract. City agrees that any security procedures imposed by City specifically for the Contract will be reasonable and will not impose any unreasonable costs or hardships.

3.29. Restrictions on the Use or Disclosure of City's Information. Contractor shall not use, copy or disclose to third parties, except in connection with performing the Services, any information obtained by Contractor or its agents, subcontractors or employees in the course of performing the Services, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of City. At City's request, all information furnished by City not otherwise required by the Contract to be returned will be returned to City upon completion of the Services. Contractor shall not be required to keep confidential any information that has already been made publicly available through no fault of Contractor or that Contractor developed independently without relying on City's information. To ensure confidentiality, Contractor shall take appropriate steps as to its employees, agents, and subcontractors, including the insertion of these restrictions in any subcontract agreement. The warranties of this paragraph shall survive the Contract.

3.30. Protection of Contractor's Trade Secrets and Other Confidential Information. All documents received by City in connection with this Agreement are subject to Chapter 119, Florida Statutes (the "Florida Public Records Law"). Any specific information that Contractor claims to be a trade secret or otherwise exempt from the Florida Public Records Law must be clearly identified as such by Contractor on all copies furnished to City. City agrees to notify Contractor of any third-party request to view such information, but it is Contractor's obligation to obtain a court order enjoining disclosure. If Contractor fails to obtain a court order enjoining disclosure within five (5) business days of Contractor's receiving notice of the request, City may release the requested information. Such release shall be deemed for purposes of the Contract to be made with Contractor's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copy right or other intellectual property.

3.31. Assignment. Each party binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of the Contract. Contractor shall not sell, assign or transfer any of its rights (including rights to payment), duties or obligations under the Contract without the prior written consent of City. In the event of any assignment, Contractor shall remain liable for performance of the Contract unless City expressly waives such liability. City may assign the Contract with prior written notice to Contractor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee or agent of City.

3.32. Notice and Approval of Changes in Ownership. Because the award of the Contract may have been predicated upon Contractor's ownership structure, Contractor agrees that any transfer of a substantial interest in Contractor by any of its owners shall require City's prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of the Contract, Contractor represents that it has no knowledge of any intent to transfer a substantial interest in Contractor. A substantial interest shall mean at least 25% of the voting shares in Contractor. This section shall not apply to (i) transfers occurring upon the incapacitation or death of an owner; (ii) transfers associated with an initial public offering on the NYSE or NASDAQ markets; or (iii) transfers to a company whose stock is publicly traded on the NYSE or NASDAQ markets.

3.33. Assignment of Antitrust Claims. Contractor and City recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by City. Therefore, Contractor hereby assigns to City any and all claims under the antitrust laws of Florida or the United States for overcharges of goods, materials or services purchased in connection with the Contract.

3.34. Equal Employment Opportunity. The Equal Opportunity clause in Title 41, Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1 through 7 of President's Executive Order 11246), the provisions of the Equal Opportunity for Individuals with Disabilities Act in 42 U.S.C. Section 12112, the Listing of Employment Openings for Veterans Clause in Title 41, Part 50-260.2 of the Code of Federal Regulations and the Disabled Veterans and Veterans of the Vietnam era Clause in Title 41, Part 60-250.5 of the Code of Federal Regulations, are incorporated herein by reference if and to the extent applicable. If Contractor is exempt from any of the above cited terms, written evidence of such exempt status must be provided to City.

3.35. Other Non-Discrimination Provisions. As required by Section 126.404, Jacksonville Ordinance Code, contractor represents that it has adopted and will maintain throughout the term of this contract a policy of nondiscrimination or harassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions and related terms and conditions of employment. Contractor agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Community Relations Commission, or successor agency or commission, for the purpose of investigation to ascertain

compliance with the non-discrimination provisions of the Contract; *provided however*, that Contractor shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the effective date of the Contract. Contractor agrees that, if any of the products or Services to be provided pursuant to the Contract are to be provided by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

3.36. Prompt Payment to Subcontractors and Suppliers. The following is required by Chapter 126, Part 6, Jacksonville Ordinance Code; provided however, if Contractor does not use JSEB subcontractors, as identified below, this Section 3.38 shall not apply:

(a) *Generally.* When Contractor receives payment from City for labor, services or materials furnished by subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subcontractors and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from City. Nothing herein shall prohibit Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to the City and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to City and said subcontractor or supplier within ten (10) calendar days after Contractor's receipt of payment from City. Contractor shall pay all undisputed amounts due within the time limits imposed by this Section.

(b) *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6 of the Jacksonville Ordinance Code, Contractor shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB"), as defined therein, their pro rata share of their earned portion of the progress payments made by City under the Contract within seven (7) business days after Contractor's receipt of payment from City (less proper retainage). The pro-rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to City, with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's from all prior payments Contractor has received from City. Contractor shall not unreasonably withhold payments to certified JSEB's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's, which payment has been made by City to Contractor, Contractor shall return said payment to City. Contractor shall provide notice to City and to the certified JSEB's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to City and said JSEB's within five (5) calendar days after Contractor's receipt of payment from City. Contractor shall pay all undisputed amounts due within the time limits imposed in this Section. The failure to pay undisputed amounts to the JSEB's within seven (7) business days shall be a breach of the Contract, compensable by one per-cent (1%) of the outstanding invoice being withheld by City, not as a penalty, but as liquidated damages to compensate for the additional contract administration by City.

(c) *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between City and any subcontractor, supplier, JSEB or any third party or create any City liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to City. As a result of said breach, City, without waiving any other available remedy it may have against Contractor, may: (i) issue joint checks; and (ii) charge Contractor a 0.2% daily late payment charge or the charges specified in said Chapter 126 of the Jacksonville Ordinance Code for JSEB's and in Chapter 218, Florida Statutes, for non-JSEB's, whichever is greater.

3.37. Conflicts of Interest. Contractor acknowledges that Section 126.112 of the Jacksonville Ordinance Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or contractor.

3.38 Contingent Fees Prohibited. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona-fide employee working solely for Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, City shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

3.39. Truth in Negotiation Certificate. The execution of the Contract by Contractor shall be deemed to be a simultaneous execution of a Truth-In-Negotiation Certificate, whereby Contractor states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further Contractor agrees that the compensation hereunder shall be adjusted to exclude any significant sums where City determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

3.40. Compliance with Applicable Laws. Contractor (and any subcontractors) must comply with all applicable federal, state and local laws, rules and regulations as the same exist and as may be amended from time to time, and which are incorporated herein by reference, including, but not limited to:

- Chapter 119, Florida Statutes (the Florida Public Records Law);
- Section 286.011, Florida Statutes (the Florida Open Meetings Law);
- Chapter 602, Jacksonville Ordinance Code (the Jacksonville Ethics Code);
- Chapter 126, Jacksonville Ordinance Code (the Jacksonville Purchasing Code);

- Chapter 666, Jacksonville Ordinance Code (the Duval County Tourist Development Plan);
- Section 125.0104, Florida Statutes (Tourist Development Tax); and
- All licensing and certification requirements applicable to performing the Services.

Contractor acknowledges that the Contract and any records related thereto are subject to Florida's Public Records Law.

3.41. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. These purchases are independent of the agreement between City and Contractor, and City shall not be a party to such transactions.

3.42. Warranty of Ability to Perform. Contractor warrants that (i) it is ready, willing and able to perform its obligations under the Contract, and (ii) to the best of Contractor's knowledge, there are no pending or threatened actions, proceedings, investigations or any other legal or financial conditions that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy its Contract obligations. Contractor shall immediately notify City in writing if its ability to perform is compromised in any manner during the term of the Contract.

3.43. Warranty of Authority to Sign Contract; License to Do Business in Florida. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

As applicable, Contractor shall be licensed to do business in the State of Florida during the Contract term and, prior to Contract execution, will provide the City with a good standing certificate from the Florida Department of State, Divisions of Corporations.

3.44. Governing State Law/Severability/Venue/Waiver of Jury Trial. The rights, obligations and remedies of the parties as specified under the Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Contract be determined by the courts to be illegal, unenforceable or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in the Contract. Therefore any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared the Contract. Article headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

All Attachments and executed Forms by Contractor are incorporated herein by reference.

3.45. Availability of Funds.

The obligations of City under the Contract are subject to the availability of funds lawfully appropriated annually for its purposes by the Council of the City of Jacksonville and in the event funds are not available, the Contract may be canceled or terminated without penalty by City by giving thirty (30) days written notice of such cancellation or termination, such notice to be signed by the Mayor and Corporation Secretary, and be delivered as provided herein.

3.46 Return of City Funds.

Contractor shall return any unspent and uncommitted City funds under this Contract in Contractor's possession at the expiration or termination of this Contract.

RESOLUTION 2017-02

A RESOLUTION OF THE DUVAL COUNTY TOURIST DEVELOPMENT COUNCIL (“TDC”) APPROVING AND AUTHORIZING A CONTRACT AWARD TO JACKSONVILLE AND THE BEACHES CONVENTION & VISITORS BUREAU, INC. D/B/A VISIT JACKSONVILLE TO PERFORM CONVENTION SALES AND SERVICES FOR THE TDC IN THE NOT TO EXCEED AMOUNT OF \$2,216,770, SUBJECT TO NEGOTIATED CONTRACT TERMS AND APPROPRIATION OF FUNDS BY THE CITY COUNCIL IN THE FY17-18 ANNUAL BUDGET ORDINANCE; AUTHORIZING THE OFFICE OF GENERAL COUNSEL TO MAKE ADDITIONAL CHANGES TO THE CONVENTION SALES AND SERVICES CONTRACT FOR THE PURPOSE OF CORRECTING CLERICAL ERRORS.

WHEREAS, the Duval County Tourist Development Council (“*TDC*”), acting on behalf of the City, issued an Omnibus Request for Proposal for Duval County Tourist Development Plan Components: (1) Tourist Bureau Services, (2) Marketing Services, and (2) Convention Sales Services Bid No. ESC-0136-17 (the “*Omnibus RFP*”);

WHEREAS, the Omnibus RFP consisted of three individual and separate Request for Proposals for the Tourist Bureau Services, Marketing Services and Convention Sales Services Tourist Development Plan components, and Jacksonville and the Beaches Convention & Visitors Bureau, Inc. d/b/a Visit Jacksonville (the “Contractor”) submitted a response to the Convention Sales and Services plan component;

WHEREAS, the Convention Sales and Services plan component description of services, minimum requirements, and evaluation criteria were described in Section 4-3, Section 5-3, and Attachment B-3 of the Omnibus RFP. For purposes of this Resolution, the term “*Convention Sales and Services RFP*” shall refer to Section 4-3, Section 5-3, Attachment B-3 and all other sections of the Omnibus RFP that were applicable to all three plan components as indicated therein;

WHEREAS, based on Contractor’s response to the Convention Sales and Services RFP dated April 28, 2017, a copy of which is on file with the City Procurement Division (the “*Response*”) and subsequent negotiations by the parties, the TDC desires to award a contract for Convention Sales and Services to the Contractor in the form substantially attached hereto as **Exhibit A** (the “*Convention Sales and Services Contract*”).

BE IT RESOLVED, by the Tourist Development Council:

Section 1. The TDC finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The TDC hereby approves and authorizes a contract award to Contractor to perform the scope of work contained in the Convention Sales and Services RFP in the not to exceed amount of \$2,216,770, subject to the negotiated terms and conditions contained in the Convention Sales and Services Contract and the appropriation of funds by the City Council for such purposes in the FY17-18 annual budget ordinance.

Section 3. The TDC hereby authorizes the Office of General Counsel to make additional changes to the Convention Sales and Services Contract for the purposes of correcting clerical errors and making other non-material changes as may be needed to further clarify the TDC's intent regarding the Convention Sales and Services Contract.

Section 4. This Resolution 2017-02 shall become effective upon its approval by the TDC this 16thth day of August, 2017.

WITNESS:

**DUVAL COUNTY TOURIST DEVELOPMENT
COUNCIL**

Anna Lopez Brosche, Council President/Chairman

VOTE: In Favor: _____ Opposed: _____ Abstained: _____

FORM APPROVAL:

Office of General Counsel

Exhibit A

(Immediately following this page)

CONTRACT FOR CONVENTION SALES AND SERVICES
(Duval County Tourist Development Plan)

THIS CONTRACT FOR CONVENTION SALES AND SERVICES (“Contract”), made and entered into this _____, 2017 (the “*Effective Date*”), by and between the **CITY OF JACKSONVILLE** (the “*City*” or “*TDC*”), a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida, and **JACKSONVILLE AND THE BEACHES CONVENTION & VISITORS BUREAU, INC.**, doing business as “Visit Jacksonville” (the “*Contractor*”).

WHEREAS, the Duval County Tourist Development Council (“*TDC*”), acting on behalf of the City, issued an Omnibus Request for Proposal for Duval County Tourist Development Plan Components: (1) Tourist Bureau Services, (2) Marketing Services, and (2) Convention Sales Services Bid No. ESC-0136-17 (the “*Omnibus RFP*”);

WHEREAS, the Omnibus RFP consisted of three individual and separate Request for Proposals for the Tourist Bureau Services, Marketing Services and Convention Sales Services Tourist Development Plan components, and the Contractor submitted a response to the Marketing Services plan component.

WHEREAS, the Convention Sales and Services plan component description of services, minimum requirements, and evaluation criteria were described in Section 4-3, Section 5-3, and Attachment B-3 of the Omnibus RFP. For purposes of this Contract, the phrase and term “*Convention Sales and Services Request for Proposal*” or “*Convention Sales and Services RFP*” shall refer to Section 4-3, Section 5-3, Attachment B-3 and all other sections of the Omnibus RFP that were applicable to all Plan Components as indicated therein.

WHEREAS, based on Contractor’s response to the Convention Sales and Services RFP dated April 28, 2017, a copy of which is on file with the City Procurement Division (the “*Response*”), the TDC awarded this Contract to Contractor;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

1. **Recitals; Capitalized Terms.** The Recitals above are true and correct and incorporated herein by reference. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Convention Sales and Services RFP.

2. **Incorporation of Convention Sales and Services RFP terms; Response; Exhibits.** The Convention Sales and Services RFP terms are incorporated herein by reference. The terms of the Convention Sales and Services RFP include, without limitation, the following sections and forms contained in the Omnibus RFP:

- (a) Section 1 (Specific Information Regarding this Omnibus RFP;
- (b) Section 2 (General Instructions)
- (c) Section 3 (General Terms and Conditions of Contract)
- (d) Section 4-3 (Description of Services)
- (e) Section 5-3 (Minimum Requirements)
- (f) Attachment A (Response Format)
- (g) Attachment B-3 (Evaluation Criteria Matrix)
- (h) Attachments C through J
- (i) Attachment K-3 Listing of Available Documents for Review
- (j) Contractor's completed and executed Forms 1 through 5

The Response, as accepted and modified by City, is incorporated herein by reference. Any terms in the Response that are prohibited under the Convention Sales and Services RFP shall not be included in this Contract. Any terms in the Response that are inconsistent with the terms of this Contract shall be void and of no effect.

3. Transition Start-up Period; Service Period.

(a) Transition Start-up Period. From the Effective Date of this Contract until September 30, 2017 (the "*Transition Start-up Period*"), Contractor may work with the Tourist Development Council staff to ensure a smooth transition from the services performed by Contractor under the Agreement for Marketing, Advertising, Promotional, and Support Services dated October 1, 2012 and expiring on September 30, 2017 (the "*Prior Contract*"), and the services to be provided by Contractor under this Contract. The Tourist Development Council shall provide reasonable assistance and cooperation to Contractor during the Transition Start-up Period.

(b) Service Period; Term. The initial service period of this Contract shall commence on October 1, 2017 and end on September 30, 2022 (the "*Term*"), unless terminated sooner by the City pursuant to the provisions of this Contract. City, in its sole discretion and upon satisfactory performance by Contractor, shall have the option to renew the Term of this Contract subject to the same term and conditions contained herein for one (1) five-year period.

4. Description of Services. The Contractor shall perform the Tourist Development Plan Convention Sales and Services described on Exhibit A attached hereto ("*Scope of Work*" or "*Services*"). If any services, functions or responsibilities not specifically described on Exhibit A are necessary for the proper performance and provision of the Services, such services, functions or responsibilities shall be deemed to be implied by and included within the Scope of Work to the same extent and in the same manner as if specifically described herein. During the Term, Contractor shall perform the Scope of Work in accordance with the Comprehensive Convention Sales and Services Plan, the Annual Approved Budget and the Annual Convention Sales, Services and Marketing Plan.

5. Maximum Indebtedness; Restrictions on Use of Funds.

(a) Maximum Indebtedness. As required by Section 106.431, *Ordinance Code*, the City's maximum indebtedness for the Services to be provided by Contractor during the Term shall not

exceed Two Million Two Hundred Sixteen Thousand Seven Hundred Seventy and 00/No Dollars (\$2,216,770.00) for Fiscal Year 2017-2018, contingent each fiscal year upon the existence of lawfully appropriated funds for the Contract. At the time of Contract execution, Contractor acknowledges and understands that the Maximum Indebtedness is contingent upon the City Council of the City of Jacksonville's approval and appropriation of the Tourist Development Council's 2017-2018 proposed annual budget (the "**TDC Budget**"). The TDC Budget is included in the 2017-2018 annual budget ordinance to be approved by the City Council (the "**Annual Budget Ordinance**"). In the event City Council's approval of the TDC Budget or Annual Budget Ordinance adversely impacts the Maximum Indebtedness amount above, Contractor agrees to execute any necessary amendments to this Contract as required by the TDC to reduce the Maximum Indebtedness, the Services, and any other documents required by the TDC within fifteen (15) days of the TDC's written demand to Contractor. Contractor also understands and acknowledges that the funding under this Contract for subsequent fiscal years is contingent upon the City Council's approval and appropriation of funds in the annual budget ordinance.

(b) **Restrictions on Use of Funds.** Unless otherwise approved by the TDC, Contractor shall not exceed the Tourist Development Plan component allocations shown on the City Council approved Tourist Development Council budget each fiscal year. Contractor shall use and expend City funds during the Term in strict compliance with the conditions, restrictions and provisions set forth in the Duval County Tourist Development Plan contained in Section 666.108, *Ordinance Code*, as amended, and Chapter 666, *Ordinance Code*, as amended.

6. **Annual Budget Approval.**

(a) **Submittal; Approval.** On or before September 15, 2017, Contractor shall submit and present a proposed annual budget in the format required under this Section for Fiscal Year 2017-2018 to the Tourist Development Council for review and approval. The Tourist Development Council shall review, modified as necessary, and approve Contractor's proposed annual budget for Fiscal Year 2017-2018 on or before September 30, 2017. Each fiscal year thereafter, Contractor shall present and submit to the Tourist Development Council a proposed detailed line item annual budget in June of each fiscal year for the upcoming fiscal year. Contractor's proposed annual budget shall be consistent with the Tourist Development Council's proposed budget for the upcoming fiscal year, the Comprehensive Convention Sales, Services and Marketing Plan, and the Annual Convention Sales, Services and Marketing Plan. The Tourist Development Council shall review, modify as necessary, and approve Contractor's proposed annual budget in July or August of each fiscal year, but in no event later than September 30th of each fiscal year. The Contractor's proposed annual budget as may be amended and approved by the Tourist Development Council shall be the "**Approved Annual Budget**". The Contractor shall provide the Services under this Contract in accordance with the Approved Annual Budget.

(b) **Budget Format.** Contractor's proposed annual budget shall be in an acceptable format to the Tourist Development Council and the City Council auditor and shall set forth how funds provided under this Contract will be spent for the fiscal year. Each identified task in the Convention Sales and Services component of the Tourist Development Plan listed in Section 666.108(b)(3)(i)-(vi), *Ordinance Code* (i.e., promotion to tourist groups, convention market targeting, convention

sales activities, coordination with City convention center manager, and convention service activities, and convention grants) shall have its own identified budget line item or line items. Such budget shall also provide detailed comparisons regarding how the annual budget compares to each allocation identified in the proposed budget submitted in the Response. Furthermore, the budget shall clearly identify as to each task the allocation between direct overhead for salaries, facilities, equipment, etc; payments to subcontractors for media production, and payments for media placements (e.g., meeting industry focused advertising campaign involving printing and mailing of brochures, and other informational material; radio, television, newspaper and magazine advertisements; outdoor advertisements); and number of employees and staff positions. The budget shall also include a line item total (and separate line items) for the aggregate amount of the Minimum Monthly Overhead Expenses defined in Section 9 below. All travel and dining, parking and similar expense payments or reimbursements shall be directly disclosed and reflected in the proposed annual budget. In addition to the foregoing proposed annual budget, the Contractor shall provide, as a separate attachment, supplemental information to the proposed annual budget ("*Supplement Budget Information Sheet*"). The Supplemental Budget Information Sheet shall include a distinct breakout of the following items which are acknowledged to be contained within the Marketing plan subpart components described above:

- i. Amount of proposed annual budget allocated to travel, meal and entertainment expenses/reimbursement. Identify allocation between local travel and expenses versus out-of-county travel and expenses. Identify allocation to entertainment of industry professionals, FAM visits, etc.;
- ii. Amount of proposed annual budget allocated to buildings and equipment and general overhead not including staffing;
- iii. Amount of proposed annual budget allocated to staffing and number of employees by job category; and
- iv. Allocation of proposed annual budget between marketing and promotions.

The proposed annual budget shall also expressly identify that portion of the total available budget to be allocated to convention grants for the applicable fiscal year. Contractor shall also attach the proposed Annual Convention Sales, Services and Marketing Plan to the proposed annual budget.

(c) Budget Amendments. Contractor may amend the Annual Approved Budget by transferring funds between established budget line items up to ten percent (10%) of each line item or a maximum amount of \$_____, whichever is less (the "Budget Transfer Cap"), without further approval by the TDC. Contractor may not transfer more than the Budget Transfer Cap between line items on the Annual Approved Budget without obtaining the prior approval of the TDC.

(d) City Council Approval. Contractor understands and acknowledges that funding under this Contract for the 2017-2018 fiscal year and subsequent fiscal years is contingent upon the City Council's approval and appropriation of the TDC Budget in the Annual Budget Ordinance. In the event City Council amends the TDC Budget during the annual budget ordinance process, Contractor shall revise the Approved Annual Budget and the Annual Convention Sales, Services and Marketing Plan to be consistent with the City Council's approved Tourist Development Council budget and submit the revised Approved Annual Budget and the revised Annual Comprehensive Sales, Service

and Marketing Plan to the Tourist Development Council for further review and approval by the Tourist Development Council.

(e) **Budget Updates.** The Contractor shall provide at each regular meeting of the Tourist Development Council an accounting for all Tourist Development Council monies held or expended during the current year through the preceding month.

7. Comprehensive Convention Sales, Service and Marketing Plan. On or before September 15, 2017, Contractor shall deliver and present to the Tourist Development Council for review and approval a comprehensive five year master plan regarding the allocation of resources to various aspects of this plan component in support of the convention and meeting tourism industry (the "***Comprehensive Convention Sales, Services and Marketing Plan***"). Unless modified by the TDC, the Comprehensive Convention Sales, Services and Marketing Plan shall be consistent in strategy and allocation of resources with the conceptual five year plan submitted in the Response and shall describe the use of sales force, meeting services offered, marketing plan for industry professionals, travel and meeting attendance plans, and use of convention grants. The Tourist Development Council shall review and approve the Comprehensive Convention Sales, Services and Marketing Plan on or before September 30, 2017, or such other date as agreed to by the parties, prior to Contractor's implementation of the plan. The Contractor shall implement the TDC approved Comprehensive Convention Sales, Services and Marketing Plan during the Term and the approved Comprehensive Convention Sales, Services and Marketing Plan shall be incorporated herein by reference and become a binding part of this Contract. Such plan shall set express annual goals for increases in REVPAR; increases in bookings and room nights directly attributable to the contract recipient's sales activities, and increases in occupancy percentage attributable to contract recipient's sales activities. Contractor shall not modify the Comprehensive Convention Sales, Services and Marketing Plan without first obtaining the approval of the Tourist Development Council.

8. Annual Convention Sales, Services and Marketing Plan. On or before September 15, 2017, Contractor shall submit and present a proposed annual comprehensive convention sales, services and marketing plan in the format required under this Section for Fiscal Year 2017-2018 to the Tourist Development Council for review and approval. The Tourist Development Council shall review, amend as necessary, and approve Contractor's proposed Annual Convention Sales, Services and Marketing Plan for Fiscal Year 2017-2018 on or before September 30, 2017. Each fiscal year thereafter, Contractor shall submit a proposed Annual Convention Sales, Services and Marketing Plan to be reviewed, modified as necessary, and approved by the Tourist Development Council in April of each fiscal year ("***Annual Convention Sales, Services and Marketing Plan***"). The Annual Convention Sales, Services and Marketing Plan shall incorporate any suggested improvements or marketing concerns contained in Contractor's Annual Performance Evaluation and shall be consistent with the Comprehensive Convention Sales, Services and Marketing Plan. This plan shall also include an analysis of the ratio of funds dedicated to the various aspects of this plan component and will contain alternatives for adjusting the ratio if necessary. Such analysis shall be based on historical experience as well as information evidenced in nationwide industry trends, such as downturns in tourism in other parts of the state or country that may translate into tourism opportunities for Jacksonville. Part of this plan shall be a set of specific actions to be taken that will increase the number of room nights spent in Jacksonville by out-of-town convention and meeting visitors. Using the 2015-2016 Fiscal Year as a benchmark, the Tourist Development Council will evaluate the

Contractor's success based on the Performance Measures (defined below), which shall include without limitation, increases in the overall number of room nights during each year of the Term. Contractor's successes shall be related to specific, purposeful activities of the Contractor under this Contract. Contractor will emphasize the reporting of room nights projected and achieved. Contractor's goals for increases in the number of room nights shall increase in accordance with the Performance Measures (defined below).

9. **Invoice and Payment.** Payment to Contractor for Services rendered for the previous month shall be made by the Tourist Development Council on a monthly reimbursement basis in no less than the minimum monthly overhead, salary for hired staff only and administrative expense amount ("***Minimum Monthly Overhead Expenses***") as indicated on the Approved Annual Budget. Any salary expenses included in the overall Minimum Monthly Overhead Expenses shall only be for hired staff and shall not salary expenses associated with unfilled, vacant staff positions. Contractor may submit up to two payment requests per month to the Tourist Development Council for Services performed under the Contract for the month. Contractor's first payment request may be made on the first day of each month for any paid fixed expense amounts contained in the Minimum Monthly Overhead Expense. Contractor's second payment request may be made on no later than the twentieth day of each month for all other monthly expenses and Services performed under the Contract for the month. Contractor's payment request shall be submitted on the payment request form attached hereto as **Exhibit C.** Contractor shall include invoices, receipts, accounting back-up, copies of fully executed paid media or advertisement contracts and such other requested documentation satisfactory to the Tourist Development Council to allow and authorize payment under the Contract ("***Back-up Documentation***"). The Tourist Development Council shall make payments to Contractor within forty-five (45) days after receipt of the Back-up Documentation. Notwithstanding the foregoing, the City's reimbursements for prepaid media or advertisements shall be based on copies of fully executed paid media and advertisement contracts provided by Contractor. Contractor shall promptly remit evidence to City of performed or satisfied media or advertisement contracts at the end of each month or as soon as the media or advertisement is performed and satisfied. After Contractor receives reimbursement under this Contract for any prepaid media or advertisement contracts as provided herein, Contractor shall not cancel such prepaid contracts without the prior approval of the Tourist Development Council. If Contractor's prepaid media or advertisement contract is not performed or satisfied for any reason, Contractor shall remit payment to the TDC within fifteen (15) days of the TDC's written demand for any previous TDC reimbursements under this Section for such prepaid media or advertisement contracts. Additionally, TDC shall have the right at its option to offset any payments owed to Contractor under this Contract by the amount of any canceled prepaid media or advertisement contracts previously reimbursed by the TDC under this Section. No Tourist Development Council funds shall be advanced to Contractor prior to Contractor rendering Services. To the extent Contractor's fees include reimbursement for travel or travel-related expenses, such travel and travel-related expenses shall be subject to and governed by the provisions and limitations of Chapter 106, Part 7, *Ordinance Code*, as may be amended. City's obligations to make payment are contingent upon availability of lawfully appropriated funds for the Services. City payments made pursuant to this Section shall be made to: Jacksonville and the Beaches Convention & Visitors Bureau, Inc., doing business as, Visit Jacksonville.

10. Annual Performance Evaluation; TDC's Right to Allocate or Reallocate Funding.

The Tourist Development Council shall evaluate the Contractor's performance of the Scope of Work (the "*Annual Performance Evaluation*") in the first quarter (e.g., January-March) of each fiscal year of the Term based on the performance measures contained on **Exhibit B** attached hereto, and any other performance measures mutually agreed to between the Contractor and the TDC ("*Performance Measures*"). Notwithstanding, the first Contract year, each subsequent Annual Performance Evaluation shall be based on the previous twelve month period. The Annual Performance Evaluation for the first Contract year shall be based on the months from the Effective Date through the evaluation date in the first quarter. The Tourist Development Council in its sole discretion may use the information and results of each Annual Performance Evaluation to allocate funding to Convention Sales and Services plan component in the proposed TDC Budget for the upcoming fiscal year and reallocate funding from the Convention Sales and Services plan component in the second and third quarters of the current fiscal year (e.g. April-September). Contractor's under or over performance under this Contract based on the Performance Measures may affect the TDC Budget allocations to the Convention Sales and Services plan component during the Term. Nothing in this Section shall prevent the Tourist Development Council from exercising any other rights or remedies under this Contract, including termination and suspension of work, for Contractor's failure to perform the Scope of Work or comply with any Contract terms or conditions contained herein.

11. Intellectual Property Registrations.

All trademarks created or used under this Contract shall be registered in the City's name. Within ten (10) days following the execution of this Contract, Contractor shall assign all of its right, title and interest to any existing trademarks registered in the Contractor's name as a result of having performed any services for the City under the Prior Contract. Contractor shall execute a trademark assignment in favor of the City in a form to be approved and provided by the City for all such existing City trademarks registered in the Contractor's name. Contractor shall notify the Contract Manager within fourteen (14) business days of any new trademarks Contractor desires to use under this Contract for which registration is desired that must be registered by the City and the City shall work diligently with appropriate City personnel and legal counsel to register the trademarks.

All domain names created or used under this Contract shall name the City as the registrant contact and the Contractor as the administrative contact. Within ninety (90) days of the Effective Date, Contractor shall assign all registrant contact information and provide all access codes for any existing domain names registered in Contractor's name as a result of having performed any services for the City under the Prior Contract. Contractor shall provide updated registrant information to the City to evidence Contractor's compliance with this provision. Contractor shall notify the Contract Manager within fourteen (14) business days of the registration of any new domain names Contractor registers under this Contract.

All works of content to which copyright attaches that Contractor prepares under this Contract are works for hire, to the extent that term applies, and if not, the works were prepared under Contract to the City. All works of content prepared under this Contract for which Contractor, or the City, seeks registration with the United States Copyright Office must be in the name of the City. Contractor shall notify the Contract Manager within fourteen (14) business days of any new works of content Contractor desires to use under this Contract for which copyright registration is desired that must be

registered by the City and the City shall work diligently with appropriate City personnel and legal counsel to register the copyrights. Contractor expressly agrees to and does assign all right, title, and interest in all works of content prepared under this Contract to the City for the purpose of copyright registration.

This Section 11 is supplemental to Sections 3.9 (Ownership of Works) and 3.10 (Intellectual Property) of **Exhibit E** attached hereto.

12. Use of City's Name in Business/Entity Names. By execution of this Contract, Visit Jacksonville acknowledges and agrees that City has granted Visit Jacksonville use of the name "Visit Jacksonville" and "Jacksonville and the Beaches Convention & Visitors Bureau, Inc." solely as a license right only and for the sole purpose of performing the Services under this Contract. At such time that the Contract terminates or expires, Visit Jacksonville agrees to immediately discontinue the use of the corporate name "Jacksonville and the Beaches Convention & Visitors Bureau, Inc." and the fictitious name "Visit Jacksonville" and agrees to execute all necessary documents required by the City and the Florida Division of Corporations to discontinue the use of these names. Upon termination or expiration of this Contract, Contractor shall not violate Section 601.405, *Ordinance Code*, regarding the false advertising or misuse of names to indicate City agency, nor Section 865.09, Florida Statutes.

13. Representations and Warranties. Without limiting the representations, warranties and covenants of Contractor set forth elsewhere in this Contract, as a material inducement for City to enter into this Contract, Contractor represents and warrants to City (and unless otherwise specified, such representations, warranties and covenants are true as of the Effective Date and shall continue and be effective during the term of this Contract as if continuously reiterated) that:

(a) Contractor is a Florida non-profit corporation duly incorporated and validly existing under the laws of the State of Florida and Section 501(c)(6) of the Internal Revenue Code. Contractor is authorized to conduct business and is in good standing in the State of Florida. Contractor has full power and authority (including the Contractor obtaining any and all required third party consents) to execute and deliver this Contract and all documents contemplated hereby, to perform its obligations arising hereunder and thereunder, and that the Contractor's entering into this Contract will not conflict with or result in a breach of any other agreement to which the Contractor is a party. The individuals signing on behalf of Contractor have full power and authority to do so and the Contractor shall promptly deliver to the City, upon request, all documents reasonably requested by the City to evidence such authority.

(b) The making, execution and delivery of this Contract and performance of all obligations hereunder by Contractor have been duly authorized and approved by the Board of Directors of Contractor.

(c) This Contract and all documents contemplated hereby each constitute a legal, valid and binding obligation of Contractor, enforceable in accordance with their respective terms, assuming execution of the same by City.

(d) This Contract and all documents contemplated hereby do not and will not contravene any provision of the governing documents of Contractor, any judgment, order, decree, writ or injunction to which Contractor is bound, or any provision of any applicable law or regulation to which Contractor is bound. The execution and delivery of this Contract and all documents contemplated hereby, and performance of its obligations hereunder and thereunder will not result in a breach of or constitute a default under any agreement or require the consent from any third party.

(e) Contractor and each of its general contractors, subcontractors, materialmen, laborers and other persons performing the Services hold all necessary licenses, permits and authorizations required by all applicable governmental agencies and authorities as a condition to conduct business in the State of Florida and to work on the Services. Contractor shall promptly deliver to the City, upon request, all documents reasonably requested by the City to evidence such licenses, permits and authorizations.

(f) Contractor has not employed or retained any third party having a relationship with City to solicit or secure this Contract and has not paid or agreed or promised to pay any such person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Contract.

14. Indemnity and Insurance Requirements. Contractor shall adhere to the indemnity and insurance requirements set forth in the Convention Sales and Services RFP and attached hereto as **Exhibit D-1** and **Exhibit D-2**, respectively.

15. Other Contract Terms. Contractor shall adhere to the General Terms and Conditions of Contract set forth in the Convention Sales and Services RFP and attached to this Contract as **Exhibit E**.

16. No Lien Affidavit; Conflict of Interest Forms. The Contractor's executed Affidavit Regarding Payment of Taxes and Lien, the Conflict of Interest Certificate Regarding Business/Personal Relationships, and the Conflict of Interest Certificate Pursuant to Section 126.201, *Ordinance Code* (collectively, the "***RFP Forms***") included in the Response shall be ongoing and continuing representations and warranties from Contractor during the Term of this Contract. Contractor shall immediately notify the TDC of any material changes to the representations and warranties of Contractor contained in the RFP Forms and any material changes to the representations and warranties of Contractor contained in the RFP Forms shall constitute a breach of the Contract terms.

17. Contractor's Governing Documents and Board Policies. Contractor's Articles of Incorporation, Bylaws, strategic plans and board policies (collectively, "***Governing Documents***") shall not be inconsistent with the terms and conditions of this Contract during the Term. To the extent that Contractor's Governing Documents are inconsistent with this Contract, the terms and conditions of this Contract shall control and such inconsistent provisions in the Governing Documents shall be void and of no effect..

18. Contract Documents. The Convention Sales and Services RFP, this Contract and any subsequent amendments hereto, and the Response (as modified and accepted by the City) (collectively, the "**Contract Documents**") are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with tourism promotion industry standards. In the event of any inconsistency, conflict, or ambiguity

between or among the Contract Documents, the more specific provision rather than the general provision contained in the Contract Documents shall control. The Contract Documents form the entire agreement between City and Contractor by incorporation herein and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties on which any party is entitled to rely upon and enforce against the other party except as specifically stated in the Contract Documents.

19. Notices. Any notice required or permitted by this Contract shall be given to the following representative of each party at the address set forth below, by hand delivery, by registered or certified mail, return receipt requested, by overnight mail or courier service, signed acknowledgment of receipt required. Notice shall be deemed as given on the day of receipt of the notice or communication, as indicated on the signed and dated receipt or acknowledgment, or on the date of hand delivery:

As to the City:

Duval County Tourist Development Council
117 West Duval Street, Suite 425
Jacksonville, FL 32202
Attn: Executive Director
(904) _____
(904) _____
Email: _____

As to Contractor:

Jacksonville and the Beaches Convention & Visitors Bureau, Inc.
dba Visit Jacksonville
208 N. Laura St.
Jacksonville, FL 32202
Attn: Chief Executive Officer
(904) _____
(904) _____
Email: _____

20. Contract Managers. Each party will designate a Contract Manager during the Term whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, City's Contract Manager is Annette Hastings, 117 West Duval St., Suite 425, Jacksonville, FL 32202 and the Contractor's Contract Manager is Paul Astleford, CEO, Visit Jacksonville, 208 N. Laura St., Jacksonville, FL 32202. Each party shall provide prompt written notice to the other party of any changes to the party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

21. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the Contractor. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. Contractor acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

22. **Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

23. **Counterparts.** This Contract, and all amendments thereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Remainder of page left blank intentionally. Signature page follows immediately.]

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

CITY:

ATTEST:

CITY OF JACKSONVILLE

By _____
James R. McCain, Jr.
Corporation Secretary

By _____
Lenny Curry
Mayor

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and un-impounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance
CITY Contract Number: _____

Form Approved:

Office of General Counsel

CONTRACTOR:

**JACKSONVILLE AND THE BEACHES
CONVENTION & VISITORS BUREAU, INC. d/b/a
VISIT JACKSONVILLE**

By: _____

Print Name/Title: _____

Dated: _____

EXHIBIT A – Scope of Work

I. Convention Sales and Services and Tourist Development Plan Requirements.

The Contractor shall promote the City of Jacksonville, which includes Atlantic Beach, Neptune Beach, Jacksonville Beach and the Town of Baldwin, as a convention and meeting site in accordance with Section 666.108(b)(3), *Ordinance Code*. The Convention Sales Services to be performed by Contractor hereunder shall consist of promotion to tourist groups, convention market targeting, coordination with the City convention center manager, and convention service activities. The Tourist Development Plan provides a minimum budget of \$2,000,000, inclusive of convention grants, and a maximum or capped budget of \$2,500,000, inclusive of convention grants. Within the minimum and maximum budget bracket for this component, the budget for Fiscal Year 2017-2018, and future years, may be increased or decreased subject to approval of the Tourist Development Council, appropriation by the Jacksonville City Council in the annual budget process, and the availability of funds.

During the Contract term the Contractor shall perform the Convention Sales component services described in Section 666.108(b)(3), *Ordinance Code*, of the Tourist Development Plan, which provides as follows:

(3) *Promotion of the City as a convention and meeting site.* This component shall require the promotion and further expansion of the City as a convention and meeting site for tourists. The promotion services to be provided under this component shall include:

(i) *Promotion to Tourist Groups.* Promotion and marketing of the City as a convention and meeting destination to meeting planners, trade associations, industry groups, professional associations, etc.;

(ii) *Convention market targeting.* Target markets based on study data and past tourist tracking;

(iii) *Convention sales activities.* Convention sales activities actively pursuing potential meetings, conferences, conventions and groups and coordinating bookings with conference and convention facilities and accommodations that meet the expressed needs of the group. In this regard, no preference shall be shown to any particular private accommodation or facility;

(iv) *Coordination with City convention center manager.* Coordination with the City's convention center manager to assist with fully booking that facility and meeting the accommodation needs of conventions booked at the Convention Center;

(v) *Convention service activities.* Convention service activities that support the needs of tourists attending conventions and conferences in the City; and

(vi) *Convention grants.* Convention grants payable to or on behalf of convention or conference groups or businesses as incentives for selection of Jacksonville as their

destination provided such conference or group shall have a minimum of 200 room nights and a minimum grant amount of \$1,000.

Contractor shall strictly adhere to Chapter 666, Ordinance Code, and the Tourist Development Plan provided therein, as may be amended.

II. Additional Deliverables to be Provided by Contractor.

In addition to the services and deliverables identified in Section I above, the Contractor shall provide and adhere to the following deliverables and contract requirements in subsections listed below during the Contract term.

A. Promotion and Marketing to Tourist Groups.

Contractor shall promote and market the City as a convention and meeting destination to meeting planners, trade associations, industry groups, professional associations, etc., and may host visits by interested professional and industrial groups, organizations and associations to evaluate the City's convention facilities. Promotion to tourist groups may also include meeting industry focused advertising campaign involving printing and mailing of brochures and other informational material; radio, television, newspaper and magazine advertisements; outdoor advertisements; and, visits by interested professional and industry groups, organizations and associations to evaluate the City's convention facilities. Representatives of City agencies and private agencies under contract with the City may travel to other locations to promote these objectives.

B. Service Enhancements.

Contractor shall perform the additional service enhancements contained in Contractor's Response as accepted or amended by the City at the time of Contract Award (collectively, the "Service Enhancements"). The Service Enhancements are incorporated herein by reference.

C. Financial Audit.

The Contractor shall provide for an annual financial audit of the contract and Tourist Development Council funded accounts, together with an accounting of any outside funds received and their source (i) if any of such funds are used to offset the cost of providing any of the services provided under the Convention Sales and Services RFP; or (ii) if any such funds are used to provide a service in partnership or cooperation with other jurisdictions or entities.

D. Reporting and Attendance at Tourist Development Council Meetings.

Contractor shall provide to the Tourist Development Council in writing, on a quarterly basis, a report of room nights reserved and the associated list of conferences, conventions, and group tour business that make up the room nights achieved through the efforts of the Convention Sales team. Group reservations achieved through the efforts of hotel sales staff shall not be included. The list must identify new and renewed business, as well as any room nights reserved that are counted in

results and are at facilities located out-of-county. The annual number of room nights to be achieved through convention sales, service and marketing activities shall be negotiated with the Tourist Development Council, with the Tourist Development Council having the final decision.

Contractor shall provide to the Tourist Development Council in writing, on a quarterly basis, a report of all groups and events for which Convention Service activities were provided in the prior quarter, any evaluations of such service provided by those in attendance or those planning the meeting or convention; and whether the group has committed to return for a future date. Contractor shall also report to the Tourist Development Council on any information, prospects or leads received while performing convention sales, services and marketing activities.

Contractor shall remit travel reports to the Tourist Development Council for all travel associated with the performance of the Convention Sales component hereunder and quarterly reports on the results of such travel. All such reports and updates required in this subsection shall be in writing.

Contractor shall attend all regular Tourist Development Council meetings and, upon request, any special Tourist Development Council meetings.

E. Support Services.

Provide or cause to be provided support services and follow-up services for the Tourist Development Council with respect to events, projects or activities approved by the Tourist Development Council when requested to do so by the Tourist Development Council and which are part of the plan element identified above.

F. Contractor Offices.

Contractor must have a staffed office in Jacksonville or establish a staffed office in Jacksonville within 30 days of award of this contract out of which all contract services will be performed.

G. Travel Policy.

Contractor shall adhere to the Travel Policy set forth in Chapter 106, Part 7, *Ordinance Code*, as amended, and incorporated herein by reference. Contractor shall only be permitted to travel in North America, including Canada, and Central America. Contractor shall not be reimbursed for any travel expenses, including parking, associated with travel to and from Tourist Development Council meetings. Contractor shall not be reimbursed expenses for meals or entertainment with Tourist Development Council members, City Council or City employees.

H. Sunshine and Public Records Requirements.

City has determined that it is in the best interest of the public that Contractor provides the Services for the Convention Sales Component in an open and transparent manner. Accordingly, for purposes of the Contract, the Contractor shall be treated like a public agency for purposes of Sunshine and Public Records Requirements only. As such, the Contractor shall be obligated by contract to

adhere to the Sunshine and Public Records Requirements contained in the Convention Sales and Services RFP.

The parties acknowledge the exemption for public records contained in Section 125.0104(9), Florida Statutes, as may be amended, which provides an exemption from Section 119.07(1) and Section 24(a), Art. I of the State Constitution, for:

- Information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution;
- Booking business records, as defined in s. 255.047;
- Trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto; and
- A trade secret, as defined in s. 812.081, held by a county tourism promotion agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

I. Required Subscription.

City shall subscribe to the DestinationMAP and STR and the STR Hotel Data (collectively, the “STR Reports”) during the Contract term. Any subscription fees related to the STR Reports shall not be included in Contractor’s annual budget approved by the Tourist Development Council. The TDC may use the STR Reports to evaluate the Contractor’s performance under this Contract.

J. Existing Convention Contracts.

Contractor acknowledges that there are existing contract responsibilities for future convention service activities or grants (collectively, the “*Existing Convention Services Contracts*”). Contractor shall perform all convention sales, marketing, promotion and other service activities related to the Existing Convention Services Contracts. Funds for any previously approved convention grants have already been encumbered out of prior or current fiscal year budgets.

K. Sales Employees. Contractor acknowledges and agrees that the sales employee positions are essential to performing the Services under this Contract. Accordingly, during the Term, Contractor shall maintain a minimum of five (5) sales employees to perform the Services under this Contract and such sales positions shall be approved by the TDC in the Contractor’s Annual Approved Budget. Once a sales employee position becomes vacant, Contractor shall have 120 days to fill such position (the “*Hiring Period*”). The Tourist Development Council shall not make payments to Contractor for

unfilled, vacant staff positions after the Hiring Period and shall reduce Contractor's Annual Approved Budget by the amount of any unfilled, vacant positions.

L. Sponsorships.

Contractor may accept funds, donations or payments from third-party sponsorships or organizations to assist with offsetting any expenses related to Contractor's participation in tourism industry related events and activities. Contractor's participation in such tourism industry related events and activities shall be approved by the Tourist Development Council and Contractor's participation in such events shall be all-inclusive and may not show preference to or other emphasize any particular event, service provider or third-party sponsor. Third-party sponsors or organization shall not be entitled to exclusive promotions or preferences during such tourism industry related events above such third-party sponsor or organization's pro-rata costs. Payments from third-parties under this Section shall be made payable to the City of Jacksonville c/o Duval County Tourist Development Council. Contractor shall forward all such third-party payments to the Contract Manager to be deposited into the appropriate City account and used in accordance with Chapter 666, *Ordinance Code*. Contractor may not award grants or provide sponsorships to third parties or third party events unrelated to TDC approved convention grants under this Contract unless approved by the TDC as an advertising or marketing campaign in the Annual Approved Budget under this Contract.

Exhibit B
Performance Measurements

The Tourist Development Council shall use the following performance measures to evaluate Contractor's performance under this Contract. The Tourist Development Council in its sole discretion shall weight each of the performance measures below in the Annual Performance Evaluation as it deems appropriate.

I. Overall Contract Performance Measures. Contractor's satisfactory performance under this Contract shall be directly tied to following overall objective performance goals and measures listed below for each year during the Contract term:

- 5% increase in new room night future production (contracts obtained in a given year for the current year and future years);
- 5% increase for room night actualization (current calendar year actual occupancy);
- .25% minimum increase for Group Segment Trend Report revenue per available room (REVPAR)
- 2% increase in awareness of Jacksonville as a destination (as measured by Smith Travel Research as part of the Destination MAP report and surveys);
- Maintain a minimum base of 50% of production that is new business (booked and actualized).

Exhibit C
PAYMENT REQUEST FORM

Name: _____

 Address: _____
 Jacksonville, FL 32202
 Phone# (904) _____
 Tax ID #: _____

Request # _____
 Contract # _____
 Date Submitted _____

1. Contract funds received to date: \$ _____
2. Contract funds disbursed to date: \$ _____
3. Contract funds previously requested but not yet received: \$ _____
4. Amount of this request \$ _____

If line 2 does not equal line 1, please explain: _____

Line Item & Description	Budget	Amount Received to Date	Amount of this Request	Remaining Balance
TOTAL	\$0	\$	\$	\$

Comments: _____

Bank: _____ Account # _____

I certify that the data reported above is correct and the amount of the cash requested does not exceed current needs.

Signed: _____

Print Name: _____

Title: _____

Exhibit D-1 – Indemnity Requirements

Contractor and its subsidiaries (collectively, the “Indemnifying Parties”) shall (and shall require all subcontractors of any tier to) hold harmless, indemnify, and defend the consolidated government of the City of Jacksonville, Florida, exercising its powers as a county (“City”) and City’s members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, loss of personal information, or personally identifiable information (PII), whether arising out of or incidental to the Indemnifying Parties’ performance of the Contract, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

3. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to City, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Contract, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full

force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

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Exhibit D-2 – Insurance Requirements

Without limiting its liability under this Contract, Contractor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000 General Aggregate
	\$2,000,000 Products & Comp. Ops. Agg.
	\$1,000,000 Personal/Advertising Injury
	\$1,000,000 Each Occurrence
	\$ 50,000 Fire Damage
	\$ 5,000 Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability (Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)	\$1,000,000 Combined Single Limit
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability
(Including Media Professional)

\$1,000,000 per Claim and Aggregate

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

Additional Insurance Provisions

- A. **Additional Insured:** All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- C. **Contractor's Insurance Primary.** The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- D. **Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
- E. **Contractor's Insurance Additional Remedy.** Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its Subcontractors, employees or agents to the City or others. Any remedy provided to the City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- F. **Waiver/Estoppel.** Neither approval by City nor failure to disapprove the insurance furnished

by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.

- G. **Certificates of Insurance.** Contractor shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. **Carrier Qualifications.** The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. **Notice.** The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not available then the Contractor, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. **Survival.** Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. **Additional Insurance.** Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. **Special Provisions:** Prior to executing this Agreement, Contractor shall present this Contract and Attachments I & J to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Contract Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Exhibit E - Other Contract Terms and Conditions

3.1. Provision of Services. A Contractor shall provide City with all of the services and deliverables described in the Convention Sales and Services RFP for the Convention Sales and Services Plan Component, the Response and this Contract. If any services, functions or responsibilities are not specifically described in the Convention Sales and Services RFP, the Response or this Contract but are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein.

3.2. Relationship of the Parties. In performance of the Services, Contractor shall be acting in the capacity of an independent contractor and not an employee, partner, joint venture or associate of City. Contractor shall be solely responsible for the labor, supplies, materials, means, methods, techniques, sequences and procedures utilized to perform the Services in accordance with the Contract. This Contract is for the benefit of Duval County and the Tourist Development Council. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Contract.

3.3. City's Right to Make Changes. City may unilaterally require, by written order, changes altering, adding to, or deducting from the Services ("Changes"), provided that such Changes are within the general scope of the Contract. City will make an equitable adjustment in the Contract price or delivery date if the Change materially affects the cost or time of performance. Such equitable adjustments require the written consent of Contractor, which shall not be unreasonably withheld. The Parties will cooperate with each other in good faith in discussing the scope and nature of the Change, the availability of Contractor personnel, the expertise and resources to provide such Change, and the time period in which such Change will be implemented.

3.4. Service Warranties. Contractor warrants that the Services shall be performed and delivered in a professional, first-class manner in accordance with the Contract and the standards prevailing in the industry. Contractor shall also undertake the following actions without additional consideration during the term of the Contract and for one year thereafter: (i) promptly making necessary revisions or corrections to resolve any errors and omissions on the part of Contractor; and (ii) conferring with City for the purpose of interpreting any of the Services or information furnished. Acceptance of the Services by City shall not relieve Contractor of these responsibilities. The warranties and covenants in this paragraph will extend to all subcontractors as well.

The foregoing warranties and covenants shall not apply (i) with respect to any portions of the Service that have been produced by anyone other than Contractor or its subcontractors; (ii) to any modifications made by anyone other than Contractor or its subcontractors or without Contractor's specific prior written consent; or (iii) to any use of the Service in a manner or for any purpose other than those contemplated in the Contract. **EXCEPT AS EXPRESSLY STATED IN THE CONTRACT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES**

**REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
CONTRACTOR'S WARRANTIES EXTEND SOLELY TO CITY.**

3.5. City Will Assist Contractor. At Contractor's request, City will provide reasonable assistance and cooperation to Contractor, including the supply of any data and information necessary for Contractor to provide the Services. City will also designate a Contract Manager who will, on behalf of City, work with Contractor and administer the Contract in accordance with its terms.

3.6. Location Requirements for Services. All Services for Plan Components 1 (Tourist Bureau Services) and 3 (Convention Sales Services) shall be performed within Duval County, Florida. These restrictions may be modified in writing if City determines, in its sole discretion, that the restrictions impose an undue burden on Contractor's ability to perform the Services as contemplated in the Contract. See Section 4-3 of the Convention Sales and Services RFP for restrictions regarding the Contractor's location requirements for the performance of Services.

3.7. Use of Subcontractors; Flow-Down Provisions. Except to the extent the use of subcontractors is disclosed in the Response or consented to in writing by City, Contractor shall not be allowed to subcontract or assign any of its duties and obligations hereunder. In all cases, Contractor will be responsible for the acts or omissions of its subcontractors. Contractor will ensure that all relevant contractual obligations will flow down to the subcontractors and will be incorporated into the subcontracts (including the obligations relating to insurance, indemnification, delays, intellectual property rights, public records, non-discrimination, audits, security, location of services, termination, transition assistance, warranties, and the manner in which the Services are to be performed).

3.8. Meetings and Reports. Contractor must attend all regularly scheduled Tourist Development Council meetings and, upon request by the City, any special Tourist Development Council meetings. Additionally, Contractor must attend all meetings and public hearings relative to the Services where its presence is determined to be necessary and requested by City and Contractor can reasonably schedule its appearance. Contractor shall provide a written monthly report summarizing Contractor's performance and any deliverables that Contractor is required to report or update the TDC on as required in Sections 4-1, 4-2 and 4-3. Contractor shall provide other periodic written or oral reports respecting the Services as City reasonably requests.

3.9. Ownership of Works.

(a) As used in Sections 3.9 and 3.10, the term "Work" shall mean each deliverable, drawing, design, specification, rendering, notebook, tracing, photograph, reference book, equipment, expendable equipment and material, negative, report, finding, recommendation, service mark or trademark, domain name, uniform resource locator (URL), internet protocol (IP) address, social media name and page, data, database, and memorandum of every description, shared with or delivered to City pursuant to the Contract.

(b) With the exception of Contractor's pre-existing intellectual property and third-party intellectual property as described in Section 3.10 below, City shall from inception own all

right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to each Work including, but not limited to, software, source code, mobile and desktop resident applications, reports, deliverables, domain names, uniform resource locators, internet protocol addresses, social media pages and postings, website login information, trademarks, service marks, fictitious names, patentable items and patents, later developed types and forms of tangible or intangible matter, and other work product developed by Contractor specifically for City in connection with the Contract, and all derivative works relating to the foregoing. The use of these Works in any manner by City shall not support any claim by Contractor for additional compensation.

(c) Any software, report, deliverable, or work product as used in connection with a Work, but previously developed by Contractor specifically for other customers of Contractor or previously developed for the express purpose of providing substantially similar services to other Contractor customers, generally shall be considered a "pre-existing work", so long as the foregoing are not first conceived of or reduced to practice as part of any Work. All Works developed under the Contract exclusive only of Contractor's pre-existing work or permitted third-party intellectual property are the property of City, without further consideration or the need for a separate document assigning ownership. Notwithstanding the foregoing, Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as City may reasonably request, to perfect or evidence City's ownership of the Work. Contractor hereby appoints City as Contractor's attorney-in-fact for the purpose of executing any documents or taking any other actions to effect City's ownership of each Work.

(d) Contractor will coordinate with City with respect to all uses, potential registrations, and registrations of all service marks, trademarks, trade dress, copyrights, patents, domain names, uniform resource locators, websites, webpages, social media accounts, later developed social media platforms and methods developed under the Contract to ensure City's ownership of the foregoing.

3.10. Intellectual Property.

(a) City grants to Contractor a royalty free and fully paid-up license to use (and such license includes a right to copy, modify and create derivative works from the subject matter of the grant) for the purpose of providing services under the Contract to City, any authorized subdivision or affiliate of City, or any third-party subject to City having provided prior express written consent to the third-party's use of the material at issue. Contractor's license and right to use any of the Works shall run concurrently with the term of the Contract. The extent of Contractor's right to sublicense any Work is limited to Contractor's performance under the Contract.

(b) If the Work contains, has embedded in, or requires for the use of, any third-party intellectual property, or if the third-party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work, Contractor shall secure for City an irrevocable, perpetual, royalty free and fully paid-up right to use all third-party intellectual property. Contractor shall secure such right at its expense and prior to incorporating any third-party intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) into any Work, including, without limitation, all

drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third-party service provider. This subparagraph does not apply to standard office software (e.g., Microsoft Office).

(c) Should City, or any third party obtaining such Work through City, use the Work or any part thereof for any purpose other than that which is specified in the Contract, it shall be at City's and such third party's sole risk.

3.11. Software Development Processes and Standards. To the extent any software is developed, modified, or otherwise procured under the Contract, Contractor will use commercially-accepted software development and documentation processes and standards.

3.12. Limitation of Warranty for City-Furnished Software. In lieu of any other warranty expressed or implied herein, City warrants that any programming aids and software packages supplied for Contractor use as City-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by City from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s). Should City furnish Contractor with any programming aids or software packages that are found not to be suitable for their intended use on the system(s) for which designed, Contractor shall notify City and supply documentation regarding any defects and their effect on progress on the Contract. City will consider equitably adjusting the delivery performance dates or compensation, or both, and any other contractual provision affected by the City-furnished property in accordance with the procedures provided for in Section 3.3 above ("City's Right to Make Changes").

3.13. Loss of Data. If any City data or record is lost or corrupted due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for correcting and recreating all production, test, acceptance and training files or databases affected which are used in the provision of services, at no additional cost to the Customer in the manner and on the schedule set by City. This remedy shall be in addition to any other remedy City may be entitled to by law or the Contract.

3.14. Purchase Orders. If the Contract requires a Service to be ordered by City via purchase order, Contractor shall not deliver or furnish the Service until a City transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by City directly with Contractor, and shall be deemed to incorporate by reference the Contract. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to City.

3.15. Best Pricing for Comparable Services to Other Government Entities. Compensation for the Services shall be as set forth in the Contract. During the Contract term, if Contractor offers better pricing to other government entities for substantially the same or a smaller quantity of Services upon the same or similar terms of the Contract ("Better Pricing"), then the price

under the Contract shall be immediately reduced to the better price. City may require Contractor to certify on an annual basis that Better Pricing (as defined above) does not exist.

3.16. Intentionally deleted.

3.17. Taxes. City is generally exempt from any taxes imposed by the State of Florida or the Federal Government. Exemption certificates will be provided upon request. Contractor shall not include any state, local and federal taxes in any prices quoted to City.

3.18. Right of Setoff. City may, in addition to other remedies available at law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted in good faith by City (or any other local government entity or authority located in Duval County, Florida) against Contractor.

3.19. Retention of Records / Audits.

(a) Contractor must establish and maintain books, records, contracts, sub-contracts, papers, financial records, supporting documents, statistical records and all other documents pertaining to the Contract (collectively, the "Records"), in whatsoever form or format (including electronic storage media) is reasonable, safe and sufficient.

(b) Contractor must retain all Records for a minimum period of three (3) years after the final payment is made under the Contract. If an audit has been initiated and audit findings have not been resolved at the end of the three (3) year period, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the Contract, at no additional cost to City. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

(c) At all reasonable times for as long as the Records are maintained, Contractor must allow persons duly authorized by City (including City's auditor and inspector general offices), and to have full access to and the right to examine, copy or audit any of the Records, regardless of the form in which kept. Contractor will not charge City for any setup, supervision or space in connection with the examination and audit. Photocopying charges will not exceed the actual and reasonable cost of the copies to Contractor, and City shall be permitted to bring its photocopying equipment if City so desires.

(d) Contractor must comply with and cooperate in any audits or reports requested by City, and must ensure that all related party transactions are disclosed to the auditor.

(e) Contractor must permit City to interview any of Contractor's employees, subcontractors and subcontractor employees to assure City of the satisfactory performance of the terms and conditions of the Contract. Unless the parties agree otherwise or City is willing to pay for the employee's reasonable travel expenses, the interviews will be conducted at the employee's primary place of work. Contractor will not charge City for any employee time unless the interview time for that employee exceeds eight (8) hours in a calendar year.

(f) Following any audit or review, if performance of Contractor is, in the opinion of City, deficient, City will deliver to Contractor a written report of the deficiencies and request for development by Contractor of a corrective action plan. Contractor hereby agrees to prepare and submit, to City, said corrective plan within ten (10) days of receiving City's written report. Thereafter, Contractor must correct all deficiencies in the corrective action plan within a reasonable time after City's receipt of the corrective action plan.

(g) All reports and other information provided by Contractor pursuant to this Section shall be submitted under penalties of perjury, under Section 837.06, Florida Statutes.

(h) Contractor must include the aforementioned audit, inspection, investigation and record-keeping requirements in all subcontracts and Contract assignments.

(i) Contractor agrees to reimburse City for the reasonable costs of investigation incurred by City for audits, inspections and investigations that uncover a material violation of the Contract. Such costs shall include the salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. Contractor shall not be responsible for any costs of investigations that do not uncover a material violation of the Contract.

3.20. Indemnification. Contractor shall adhere to the indemnification requirements contained on **Attachment F** attached hereto during the term of the Contract.

3.21. Insurance. Contractor shall adhere to the insurance requirements contained on **Attachment F** attached hereto during the term of the Contract.

3.22. City's Right to Suspend Work. City may in its sole discretion suspend any or all activities under the Contract by providing a written notice to Contractor at least five (5) days in advance that outlines the particulars of suspension. Within ninety (90) days of providing such notice, or within any longer period agreed to by Contractor, City shall either (1) authorize the resumption of work, at which time activity shall resume, or (2) terminate the Contract in accordance with the applicable termination provisions. Suspension of work shall not entitle Contractor to any additional compensation. The parties will reasonably amend any schedules relating to performance of the Services to reflect the suspension of work hereunder. Contractor shall not be entitled to receive compensation for any work it performs after being excused from providing it hereunder.

3.23. City's Right to Terminate for Convenience. City reserves the right to terminate the Contract or any of its components at any time and for any reason by giving written notice to Contractor. If the Contract is terminated for convenience as provided herein, City will be relieved of all further obligations other than payment for that amount of Services actually performed to the date of termination, which shall include any TDC approved and unpaid obligation of Contractor made by Contractor pursuant to this Contract. Upon expiration or termination of this Contract, Contractor shall execute an assignment of contract in a form approved by the City assigning to the TDC all Contractor's right, title and interest in any TDC approved contracts executed by Contractor. Access to any and all work papers will be provided to the District after the termination

of the Contract. The parties understand and agree that Contractor shall not have a reciprocal right to terminate the Contract for convenience; it being understood that City's payment for Services forms the consideration for Contractor not having this right. In the event of City's termination of the Contract, City (in its sole discretion) may also require Contractor to provide the Transition Services as set forth in Section 3.26 below.

3.24. City's Remedies Upon Contractor Default. Any one or more of the following events, if not cured within ten (10) calendar days after Contractor's receipt of written notice thereof, shall constitute an "Event of Default" on the part of Contractor: (1) Contractor fails to perform the Services in accordance with the Contract terms, (2) Contractor fails to maintain adequate progress, thus endangering performance of the Contract, (3) Contractor fails to honor any other material term of the Contract, or (4) Contractor fails to abide by any statutory, regulatory, or licensing requirement. City may extend the 10-day cure period in its discretion.

In addition, the following shall constitute an immediate Event of Default with no right cure: (i) Contractor is found to have made a false representation or certification in its Response, or (ii) Contractor has been placed on the list maintained under Section 287.135, Florida Statutes, of companies with activities in Sudan or in Iran Petroleum Energy Sector.

Upon an "Event of Default" on the part of Contractor, City will be entitled to terminate the Contract and pursue such other remedies available at law or equity, including the recovery of any procurement costs and delay damages. The rights and remedies available to City under the Contract are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience.

3.25. Contractor Remedies Upon City Default. City shall be in default if City fails to honor any material term of the Contract, and such failure is not cured within forty-five (45) calendar days after receipt of written notice thereof from Contractor. In the event of City's default, Contractor will be entitled to terminate the Contract and pursue such other remedies available at law or equity as it deems appropriate. **Except as expressly provided elsewhere in the Contract, Contractor will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to Contractor under the Contract are distinct, separate and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

3.26. Transition Services. At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), City may request Contractor to provide reasonable transition assistance services ("Transition Assistance"). Contractor shall provide such Transition Assistance until such time as City notifies Contractor that City no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service provider (either City itself or a third party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by City, those third parties shall cooperate with Contractor in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Contractor.

Transition Assistance rendered before the Termination Date shall be provided at no additional cost to City. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Contractor charges to government entities for comparable services; provided however, that if City terminates the Contract because of a breach by Contractor, then (i) the Transition Assistance shall be provided at no cost to City, and (ii) City will be entitled to any other remedies available to it under law. Contractor may withhold Transition Assistance after the Termination Date if City does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Contractor in accordance with the invoicing and payment provisions of the Contract.

3.27. Force Majeure, Notice of Delay, and No Damages for Delay. Neither party shall be responsible for delays in performance if the delay was beyond that party's control (or the control of its employees, subcontractors or agents). Contractor shall notify City in writing of any such delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date Contractor first had reason to believe that a delay could result. Based upon such notice, City will give Contractor a reasonable extension of time to perform; provided, however, that City may elect to terminate the Contract in whole or in part if City determines, in its sole judgment, that such a delay will significantly impair the value of the Contract to City. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** No claim for damages, other than for an extension of time, shall be asserted against City. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

3.28. No Waiver. The delay or failure by a party to exercise or enforce any of its rights under the Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. Unless otherwise agreed in writing, City's payment for the Services shall not release Contractor of its obligations under the Contract and shall not be deemed a waiver of City's right to insist upon strict performance hereof.

3.29. Qualification of Contractor Employees, Subcontractors, and Agents. All Contractor employees, subcontractors and agents performing work under the Contract shall be properly trained and qualified. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors and agents performing work under the Contract must comply with all reasonable administrative requirements of City and with all controlling laws and regulations relevant to the services they are providing under the Contract. City may conduct, and Contractor shall cooperate in, a security background check or other assessment of any employee, subcontractor or agent furnished by Contractor. City may refuse access to, or require replacement of, any personnel for reasonable cause.

Contractor shall take all actions necessary to ensure that Contractor's employees, subcontractors and agents are not considered employees of City. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than City.

As a condition to providing services to City, Contractor (and any subcontractor) will enroll and participate in the federal E-Verify Program within thirty days of the effective date of the Contract. Proof of enrollment and participation will be made available to City upon request.

3.30. Security Procedures. Contractor and its employees, subcontractors and agents shall comply fully with all generally applicable security procedures of the United States, the State of Florida, including without limitation Section 501.171, Florida Statutes, and City regarding the security of personal information and personally identifiable information (PII) in performance of the Contract. City agrees that any security procedures imposed by City specifically for the Contract will be reasonable and will not impose any unreasonable costs or hardships.

3.31. Restrictions on the Use or Disclosure of City's Information. Contractor shall not use, copy or disclose to third parties, except in connection with performing the Services, any information obtained by Contractor or its agents, subcontractors or employees in the course of performing the Services, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of City. At City's request, all information furnished by City not otherwise required by the Contract to be returned will be returned to City upon completion of the Services. Contractor shall not be required to keep confidential any information that has already been made publicly available through no fault of Contractor or that Contractor developed independently without relying on City's information. To ensure confidentiality, Contractor shall take appropriate steps as to its employees, agents, and subcontractors, including the insertion of these restrictions in any subcontract agreement. The warranties of this paragraph shall survive the Contract.

3.32. Protection of Contractor's Trade Secrets and Other Confidential Information. All documents received by City in connection with this Agreement are subject to Chapter 119, Florida Statutes (the "Florida Public Records Law"). Any specific information that Contractor claims to be a trade secret or otherwise exempt from the Florida Public Records Law must be clearly identified as such by Contractor on all copies furnished to City. City agrees to notify Contractor of any third-party request to view such information, but it is Contractor's obligation

to obtain a court order enjoining disclosure. If Contractor fails to obtain a court order enjoining disclosure within five (5) business days of Contractor's receiving notice of the request, City may release the requested information. Such release shall be deemed for purposes of the Contract to be made with Contractor's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copy right or other intellectual property.

3.33. Assignment. Each party binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of the Contract. Contractor shall not sell, assign or transfer any of its rights (including rights to payment), duties or obligations under the Contract without the prior written consent of City. In the event of any assignment, Contractor shall remain liable for performance of the Contract unless City expressly waives such liability. City may assign the Contract with prior written notice to Contractor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee or agent of City.

3.34. Notice and Approval of Changes in Ownership. Because the award of the Contract may have been predicated upon Contractor's ownership structure, Contractor agrees that any transfer of a substantial interest in Contractor by any of its owners shall require City's prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of the Contract, Contractor represents that it has no knowledge of any intent to transfer a substantial interest in Contractor. A substantial interest shall mean at least 25% of the voting shares in Contractor. This section shall not apply to (i) transfers occurring upon the incapacitation or death of an owner; (ii) transfers associated with an initial public offering on the NYSE or NASDAQ markets; or (iii) transfers to a company whose stock is publicly traded on the NYSE or NASDAQ markets.

3.35. Assignment of Antitrust Claims. Contractor and City recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by City. Therefore, Contractor hereby assigns to City any and all claims under the antitrust laws of Florida or the United States for overcharges of goods, materials or services purchased in connection with the Contract.

3.36. Equal Employment Opportunity. The Equal Opportunity clause in Title 41, Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1 through 7 of President's Executive Order 11246), the provisions of the Equal Opportunity for Individuals with Disabilities Act in 42 U.S.C. Section 12112, the Listing of Employment Openings for Veterans Clause in Title 41, Part 50-260.2 of the Code of Federal Regulations and the Disabled Veterans and Veterans of the Vietnam era Clause in Title 41, Part 60-250.5 of the Code of Federal Regulations, are incorporated herein by reference if and to the extent applicable. If Contractor is exempt from any of the above cited terms, written evidence of such exempt status must be provided to City.

3.37. Other Non-Discrimination Provisions. As required by Section 126.404, Jacksonville Ordinance Code, contractor represents that it has adopted and will maintain throughout the term of this contract a policy of nondiscrimination or harassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other

impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions and related terms and conditions of employment. Contractor agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Community Relations Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the non-discrimination provisions of the Contract; *provided however*, that Contractor shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the effective date of the Contract. Contractor agrees that, if any of the products or Services to be provided pursuant to the Contract are to be provided by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

3.38. Prompt Payment to Subcontractors and Suppliers. The following is required by Chapter 126, Part 6, Jacksonville Ordinance Code; provided however, if Contractor does not use JSEB subcontractors, as identified below, this Section 3.38 shall not apply:

(a) *Generally.* When Contractor receives payment from City for labor, services or materials furnished by subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subcontractors and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from City. Nothing herein shall prohibit Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to the City and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to City and said subcontractor or supplier within ten (10) calendar days after Contractor's receipt of payment from City. Contractor shall pay all undisputed amounts due within the time limits imposed by this Section.

(b) *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6 of the Jacksonville Ordinance Code, Contractor shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB"), as defined therein, their pro rata share of their earned portion of the progress payments made by City under the Contract within seven (7) business days after Contractor's receipt of payment from City (less proper retainage). The pro-rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to City, with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's from all prior payments Contractor has received from City. Contractor shall not unreasonably withhold payments to certified JSEB's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's, which payment has been made by City to Contractor, Contractor shall return said payment to City. Contractor shall provide notice to City and to the certified JSEB's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and

(iv) be delivered to City and said JSEB's within five (5) calendar days after Contractor's receipt of payment from City. Contractor shall pay all undisputed amounts due within the time limits imposed in this Section. The failure to pay undisputed amounts to the JSEB's within seven (7) business days shall be a breach of the Contract, compensable by one per-cent (1%) of the outstanding invoice being withheld by City, not as a penalty, but as liquidated damages to compensate for the additional contract administration by City.

(c) *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between City and any subcontractor, supplier, JSEB or any third party or create any City liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to City. As a result of said breach, City, without waiving any other available remedy it may have against Contractor, may: (i) issue joint checks; and (ii) charge Contractor a 0.2% daily late payment charge or the charges specified in said Chapter 126 of the Jacksonville Ordinance Code for JSEB's and in Chapter 218, Florida Statutes, for non-JSEB's, whichever is greater.

3.39. Conflicts of Interest. Contractor acknowledges that Section 126.112 of the Jacksonville Ordinance Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or contractor.

3.40. Contingent Fees Prohibited. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona-fide employee working solely for Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, City shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

3.41. Truth in Negotiation Certificate. The execution of the Contract by Contractor shall be deemed to be a simultaneous execution of a Truth-In-Negotiation Certificate, whereby Contractor states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further Contractor agrees that the compensation hereunder shall be adjusted to exclude any significant sums where City determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

3.42. Compliance with Applicable Laws. Contractor (and any subcontractors) must comply with all applicable federal, state and local laws, rules and regulations as the same exist and as

may be amended from time to time, and which are incorporated herein by reference, including, but not limited to:

- Chapter 119, Florida Statutes (the Florida Public Records Law);
- Section 286.011, Florida Statutes (the Florida Open Meetings Law);
- Chapter 602, Jacksonville Ordinance Code (the Jacksonville Ethics Code);
- Chapter 126, Jacksonville Ordinance Code (the Jacksonville Purchasing Code);
- Chapter 666, Jacksonville Ordinance Code (the Duval County Tourist Development Plan);
- Section 125.0104, Florida Statutes (Tourist Development Tax); and
- All licensing and certification requirements applicable to performing the Services.

City has determined that it is in the best interest of the public that Contractor provides the Convention Sales and Services Tourist Development Plan component in an open and transparent manner. Accordingly, for purposes of this Contract, the Contractor shall be treated like a public agency for purposes of Florida's Public Records and Sunshine Law requirements. As such, the Contractor shall adhere to Florida's Public Records Law, Section 119.0701, Florida Statutes, and the Open Meetings Law and Public Records Requirements contained in the Convention Sales and Services RFP in the performance of Services under the Contract.

3.43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. These purchases are independent of the agreement between City and Contractor, and City shall not be a party to such transactions.

3.44. Warranty of Ability to Perform. Contractor warrants that (i) it is ready, willing and able to perform its obligations under the Contract, and (ii) to the best of Contractor's knowledge, there are no pending or threatened actions, proceedings, investigations or any other legal or financial conditions that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy its Contract obligations. Contractor shall immediately notify City in writing if its ability to perform is compromised in any manner during the term of the Contract.

3.45. Warranty of Authority to Sign Contract; License to Do Business in Florida. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

As applicable, Contractor shall be licensed to do business in the State of Florida during the Contract term and, prior to Contract execution, will provide the City with a good standing certificate from the Florida Department of State, Divisions of Corporations.

3.46. Governing State Law/Severability/Venue/Waiver of Jury Trial. The rights, obligations and remedies of the parties as specified under the Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Contract be determined by the courts to be illegal, unenforceable or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in the Contract. Therefore any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared the Contract. Article headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

All Attachments and executed Forms by Contractor are incorporated herein by reference.

3.47. Availability of Funds.

The obligations of City under the Contract are subject to the availability of funds lawfully appropriated annually for its purposes by the Council of the City of Jacksonville and in the event funds are not available, the Contract may be canceled or terminated without penalty by City by giving thirty (30) days written notice of such cancellation or termination, such notice to be signed by the Mayor and Corporation Secretary, and be delivered as provided herein.

3.48 Personnel/Volunteer Policies.

In addition to all other applicable personnel/volunteer policies of Contractor, including any policies contained in Contractor's Response to the Convention Sales and Services RFP. Contractor shall perform at a minimum a "Level 2" background screening standards on all Contractor's employees and volunteers used by Contractor to perform the Services. Such "Level 2" background screening shall be consistent with the City's Employee Services Department employee and volunteer policy and Section 435.04, Florida Statutes.

3.49 Return of City Funds.

Contractor shall return any unspent and uncommitted City funds in Contractor's possession at the expiration or termination of this Contract.