SINGLE SOURCE AWARD **BID # SS-0266-18**

Subject: Marketing Services for Tourist Bureau Services

Department: City Council

Description of Purchase: Recommend approval to ratify the period of service from January 1, 2018 to date of award. Recommend approval to extend the single source award with Jacksonville and the Beaches Convention & Visitors Bureau, Inc. dba Visit Jacksonville for sixty (60) days through February 28, 2018, and increase the award by $52,500.00. Total revised estimated expenditure amount is $131,250.00.

Funding Source: CCTD132OP-04904 – To be executed by formal contract amendment through the Office of General Counsel

Single Source Award To: Jacksonville and the Beaches Convention & Visitors Bureau, Inc. dba Visit Jacksonville

Price Justification: See Attached

Total Award: $131,250.00 **Requisition #:** N/A

Attachments: Recommendation Memo, Single Source Form, Vendor Letter and Scope of Work

Certification as to Single Source: Annette R. Hasting, Executive Director, Duval County Tourist Development Council

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.206.

Analyst: Annette Burney

Gregory Pease, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

CHAIRMAN ***DATE***

ACTION OF AWARDING AUTHORITY DATE: _____

APPROVED_____ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

Jacksonville
DUVAL COUNTY
Tourist Development Council

OFFICE OF THE CITY COUNCIL

Annette R. Hastings
TDC EXECUTIVE DIRECTOR
OFFICE (904) 630-7625
FAX (904) 630-2906
E-MAIL: ANNETTEH@coj.net`

117 WEST DUVAL STREET, SUITE 425
4TH FLOOR, CITY HALL
JACKSONVILLE, FLORIDA 32202

January 5, 2018

MEMORANDUM

TO: Gregory Pease, Chief of Procurement
Procurement Division

FROM: Annette R. Hastings, Executive Director
Duval Tourist Development Council

SUBJECT: Requesting Permission to Extend Visit Jacksonville Tourist Bureau Services Transition Contract # 7393-13

The Duval County Tourist Development Council (TDC) respectfully requests permission to extend the Single Source Provider for Marketing Services for Tourist Bureau Services as described in Section 666.108 (b) (1) of the Ordinance Code.

1. Justification

These professional services require competence in program implementation and the capacity to be able to deliver the services. As such, in order to make the best decision for the City of Jacksonville, the TDC requests an extension of the temporary Transition Contract with Visit Jacksonville for Tourist Bureau Services (# 7393-13) for an additional period beyond its current termination date to allow the transition and execution of contract just awarded to Visit Jacksonville for Bid # ESC-0575-17 to take place. The TDC has recommended a 60-day extension to avoid any disruption of service.

2. Certification

As required in Section 126.204 (a) (1), Ordinance Code, the TDC certifies the following:

The Tourist Council is to implement and administer the Plan in strict compliance with the Plan components. The general purpose of the services and specific information is stated in Chapter 70, Section 666.108 of the Ordinance Code for the Duval County Tourist Development Plan. *Tourist Bureau.* This component shall require the establishment of a tourist bureau, which shall operate and serve as the City's premier expert on tourist attractions, activities and events, accommodations, and restaurants available to tourists who visit the City, which includes Atlantic Beach, Neptune Beach, Jacksonville Beach (collectively, the "Beaches") and the town of Baldwin. Such tourist bureau shall provide the following services:

i. *Visitor Centers.* The establishment, operation and staffing of a visitor kiosk at the Jacksonville Airport, at least one visitor center in Downtown Jacksonville, and one visitor center in the Atlantic, Neptune and Jacksonville Beaches area (individually and collectively, the "Visitor Center" or "Visitor Centers"). Each Visitor Center shall be open a minimum of 50 hours per week, including both Saturday and Sunday for a minimum of five hours each day. The Visitor Centers shall be located so as to maximize visibility and accessibility by tourists and preference shall be given to use of City-owned property for such purpose. Signage on the Interstate directing tourists to the Visitor Center shall be pursued and installed. Supplemental unstaffed kiosks at strategic tourist attractions shall be pursued;

Comprehensive listings. The establishment of continually updated comprehensive and all-inclusive listings of all public and private museums including library special collections; guided tours; event listings at all City-owned facilities such as the arena, performing arts center, baseball grounds, stadium and other City-owned venues; other events and activities submitted to the website host which are open to the public; golf courses and other sports facilities open to the public; activity rentals (bicycle, kayak, power boats, etc.); charter fishing captains; manufacturing facility tours; links to Jacksonville Parks, Libraries and other public facilities offered within the City of Jacksonville; hotels, motels, bed and breakfasts and other accommodations; restaurants, bars, clubs, and similar food and entertainment establishments; and other similar listings of tourist oriented facilities and activities. Such listings may not show preference to, or otherwise emphasize, any particular event or service provider. This service shall also include a pro-active development of such listings by reaching out to a wide spectrum of community organizations and resources to ascertain the activities, facilities, and events currently available and such activity shall be an on-going and continuous effort to ascertain all that the City has to offer tourists. While some listings may be acquired by the purchase of prepared lists, others will require in-house research and creation; and

Assembly of available information. The assembly of available information on, or creation of new 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., and such other maps and guides that identify attributes of the City for which tourists commonly search.

ii. The intent of the TDC is to contract an agreement for tourist bureau services for:

- Extend Tourist Bureau Services for Duval County transition contract for sixty (60) days.

iii. The proposed cost of the services :

- Tourist Bureau Services-Maximum budget of $52,500.00

Index Code:	CCTD 1320P
Sub Object:	4904

iv. The proposed services <u>would not duplicate</u> existing services.

Attachments:
Visit Jacksonville Letter
TDC Minutes (December 14, 2017)
CSPEC Committee Recommendation (BID # 0575-17))
Visit Jacksonville Contract Tourist Information Services (# 7393-13)

Visit Jacksonville and the Beaches
208 N. Laura Street, Suite 102
Jacksonville, Florida 32202
800.733.2668

January 4, 2018

Dear Annette Hastings,

In response to the discussion regarding Tourist Bureau Services during the Tourist Development Council special meeting held on December 14, 2017, Visit Jacksonville agrees to enter into a transitional contract until the new 3-year contract is approved and executed (not to exceed sixty days). The contract provides an amount not to exceed $26,250 monthly paid on a reimbursable basis to perform Tourist Bureau Services following the same terms as our existing contract.

Scope of Services During the Contract term, the Contractor shall perform the Tourist Bureau component services described in Section 666.!OS(b)(I), *Ordinance Code,* of the Tourist Development Plan, which provides as follows:

(i.) Visitor Centers. Operation and staffing of a visitor kiosk at the Jacksonville Airport, and visitor centers in Downtown Jacksonville and in the Beaches. Each Visitor Center shall be open a minimum of 50 hours per week. *(ii.) Comprehensive listings.* The establishment of continually updated comprehensive and all-inclusive listings of tourism businesses. *(iii.) Assembly of available information.* The assembly of available information on, or creation of maps and guides that identify attributes of the City for which tourists commonly search.

These services could most successfully be carried on by Visit Jacksonville because we are the only company currently performing these duties for the City of Jacksonville's Tourist Development Council. We already have systems in place for all services required within the Scope of Services. Visit Jacksonville is the only company that has been contracted to perform these duties for the last 21 years. It would require no changes for our company to carry on these duties and bridge the gap in services until the end of December where as any other company would require a transition period to implement the components and new systems, and to hire and train staff members.

Sincerely,

Katie Mitura
Vice President, Visit Jacksonville

Jacksonville
DUVAL COUNTY
Tourist Development Council

OFFICE OF THE CITY COUNCIL

Annette R. Hastings
TDC EXECUTIVE DIRECTOR
OFFICE (904) 630-7625
FAX (904) 630-2906
E-MAIL: ANNETTEH@coj.net

117 WEST DUVAL STREET, SUITE 425
4TH FLOOR, CITY HALL
JACKSONVILLE, FLORIDA 32202

TOURIST DEVELOPMENT COUNCIL SPECIAL MEETING MINUTES
Thursday, December 14, 2017
2:00 P.M.
117 West Duval Street
City Hall, Fourth Floor
Conference Room A

I. Call to Order

Roll Call

City Council President Anna Lopez Brosche, Board Chairperson
City Council Vice President Aaron Bowman, Board Vice Chairperson
City Council Member Lori N. Boyer, Board Member
Barbara Goodman, Board Member–Excused
Steven Grossman, Board Member
Kirit Patidar, Board Member-Excused
Craig Smith, Board Member-Excused
Dawn Southworth, Board Member
Jeffrey Truhlar, Board Member-Excused

Annette Hastings, TDC Executive Director
Jeff Clements, Chief of Research
Kim Taylor, Assistant Council Auditor
Phillip Peterson, Principal Council Auditor
Lawsikia Hodges, Deputy General Counsel

Meeting Convened 2:01 p.m. **Meeting Adjourned: 2:42 p.m.**

II. Introductions

Chairwoman Brosche convened the meeting at 2:01 and the attendees introduced themselves for the record. She welcomed Steve Grossman, CEO of the Jacksonville Aviation Authority, to his first meeting as a TDC member.

III. Approval of Minutes

The minutes of the November 16, 2017 TDC Quarterly Meeting were **approved as distributed 5-0**.

IV. TDC RFP ESC-0575-17 Tourist Bureau Plan Services

The Procurement Division's Competitive Sealed Proposal Evaluation Committee (CSPEC) met last week to interview the proposer and recommended approval of the award to the highest ranking proposer, Visit Jacksonville, Inc., to provide Tourist Bureau Services.

Motion (Boyer/2nd Bowman): approve the CSPEC's recommendation to award the Tourist Bureau contract to Visit Jacksonville, Inc. -

Council Member Boyer questioned the amount showing in the contract which is not the annual amount the TDC had previously allocated. Phillip Peterson of the Council Auditor's Office said that the amount is for three-fourths of the first-year budget, with the first quarter budget already having been allocated under the temporary transition contract currently in effect.

Motion (Boyer/2nd Bowman): modify the previous motion to authorize the Office of General Counsel to negotiate a contract with Visit Jacksonville consistent with the budget amounts included in Visit Jacksonville's proposal, the contract to be brought back to the TDC for final approval –

Public Comments – none

The second Boyer motion was **approved 5-0.**

The group discussed an extension of the temporary Transition Contract with Visit Jacksonville for Tourist Bureau Services for an additional period beyond its current termination date to allow the transition to the new contract just approved to take place. Commissioner Steve Grossman recommended a 60-day extension to avoid any disruption of service. Council Member Boyer noted that the extension of the transitional contract will have the effect of reducing the ultimate budget amount covered by the final contract with Visit Jacksonville. Ms. Hodges reported that the extension will need to go back through Procurement to approve a single-source contract with the current vendor. She noted that the participation of the full TDC meeting after each step of the process by Procurement to ratify those decisions is causing the procurement process to run slowly, but she anticipates that the final contract will be completed and ready for ratification early in the new year.

Motion (Grossman/2nd Boyer): approve an extension of the transitional contract with Visit Jacksonville until the new 3-year contract is approved and executed (not to exceed the last day of February 2018) and request the Procurement Division to approve a single-source award to Visit Jacksonville for that purpose -

Public Comments – none

The Grossman motion was **approved 5-0.**

V. Establishment of Special Events and Convention Grant Guidelines under 2016-599-E

Chairwoman Brosche described the background of the decision to adopt grant guidelines and announced her decision to appoint an advisory committee to undertake that task and provide recommendations to the TDC. She distributed a draft committee charge document with proposed members and a deadline for final report of February 9, 2018. Ms. Boyer noted that guidelines already exist for making application and processing of requests, but she wants the advisory committee's charge to clearly be much broader to include policy research about what sorts of events to support and why, how other counties utilize their grants and what sorts of events they try to attract, etc. Ms. Brosche said that she would work with TDC Administrator Annette Hastings and attorney Hodges to revise the wording of the committee charge to reflect that broader policy scope. Council Member Bowman suggested that either a chairperson be designated in the memo or that the charge authorize the advisory group to elect its own chairperson.

Motion (Boyer/2nd Bowman): TDC authorizes creation of an advisory body to study and report on guidelines for the use of special event and convention grants; approves the appointment of the 9 members listed in the draft charge memo (plus Maria Mark as a 10th member); and delegates to the TDC Chair the authority to appoint replacement members in the event that any of the 10 approved members cannot serve (provided that at least 5 of the original members listed in the draft committee charge are able to serve) and to designate a chairperson for the body –

Public Comments - none

The Boyer motion was **approved 5-0**.

VI. Legislative Filings - Update

Ordinance 2017-848 (Funding Jacksonville Zoological Society, Inc.) and Ordinance 2017-850 (TDC Revised Budget Schedule): Ms. Hodges reported that both ordinances have been filed and are in process. Council Member Boyer asked the Council Auditors to review the revised budget and make any suggestions for needed amendments based on the outcome of the Tourist Bureau Services contract previously discussed via 2017-850 in committee rather than filing separate legislation for the purpose.

VII. Visit Jacksonville Travel Schedule

Katie Mitura of Visit Jacksonville distributed a list of Marketing Sales and Service travel schedule changes from the travel document (Marketing Department Travel Plan FY 2017-18) distributed at an earlier meeting, and Monica Smith of Visit Jacksonville distributed a list of Convention Sales and Service travel schedule changes from the travel document (Convention Sales Department Travel Plan FY 2017-2018) distributed at an earlier meeting.

Motion (Bowman/2nd Grossman): approve the two revised travel budgets as presented today -

In response to a question from Mr. Grossman about whether Visit Jacksonville could change its travel to listed events without further TDC approval, Ms. Boyer said that they could not until the City Council approves revisions to City travel regulations that address Visit Jacksonville's particular travel needs. Once new regulations are adopted by Council, they may provide for a mechanism for the agency to make administrative changes to the approved travel plan without further TDC ratification.

Public Comments – none

The Bowman motion was **approved 5-0**.

VIII. Closing Comments

The TDC will hold a special meeting in January to approve the final Tourist Bureau Services contract and for Visit Jacksonville, Inc. to make a presentation on proposed uses of the Planning and Development allocation of $150,000 for tourism-related studies.

IX. Adjourn

The meeting was adjourned at 2:42 p.m.

Jeff Clements, Council Research Division
Posted 12.15.17 9:00 a.m.

7393-13

CONTRACT FOR TOURIST BUREAU INFORMATION SERVICES

THIS CONTRACT FOR TOURIST BUREAU INFORMATION SERVICES ("***Contract***"), made and entered into as of October 1, 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" ("***Contractor***").

WHEREAS, the Duval County Tourist Development Council ("***TDC***"), acting on behalf of the City pursuant to Section 70.105, *Ordinance Code*, awarded Single Source Award Bid No. SS-0266-18 to Contractor to perform certain tourist bureau information services within Duval County;

WHEREAS, the parties desire to enter into this Contract subject to the terms and conditions contained herein.

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. All capitalized terms shall have the meanings ascribed to them in this Contract.

2. **Service Period.**

The service period of this Contract shall commence on October 1, 2017 and end on December 31, 2017 (the "***Term***"), unless terminated sooner by the City pursuant to the provisions of this Contract.

3. **Description of Services; Scope of Work.** The Contractor shall perform the tourist bureau information 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. Contractor shall perform the Scope of Work in accordance with the Approved Budget attached hereto as **Exhibit B**.

4. **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 Seventy-eight Thousand Seven Hundred Fifty and 00/No Dollars ($78,750.00) for Fiscal Year 2017-2018. 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 proposed annual budget for Fiscal Year 2017-2018 (the "***TDC Budget***"). Contractor further acknowledges and understands that funds for Fiscal Year 2017-2018 will be subsequently encumbered under this Contract after the TDC Budget is approved by the City Council. The TDC Budget is included in the 2017-2018 annual budget ordinance 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 applicable Tourist Development Plan component and allocations to Contractor 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.

5. Invoice and Payment.

(a) Monthly Overhead Expenses. The TDC shall pay Contractor for the budgeted overhead expenses on a monthly basis for the expenses incurred in the previous month. The monthly overhead expense line items highlighted on the Approved Annual Budget shall be paid by the TDC in three payments ("***Monthly Overhead Expenses Payment(s)***") as shown on the Monthly Overhead Expenses Payment Schedule attached hereto as **Exhibit C-1**, subject to such payments being adjusted and reduced as provided in this Section. Contractor shall within thirty (30) days receipt of each Monthly Overhead Expenses Payment provide the TDC with paid invoices and receipts, payroll registers evidencing employee salaries paid for the previous month, and any other back-up documentation as requested by the TDC to evidence the overhead expenses incurred by Contractor for the previous month ("***Monthly Overhead Back-up Documentation***"). The TDC shall review, approve and reconcile the Monthly Overhead Back-up Documentation with the correlating Monthly Overhead Expenses Payment within forty-five (45) days receipt thereof ("***Post Payment Reconciliation***"). In the event that the Monthly Overhead Back-up Documentation totals an amount less than the correlating Monthly Overhead Expenses Payment, the TDC shall, at such time that the Post Payment Reconciliation is completed, adjust and reduce the next available unpaid Monthly Overhead Expenses Payment by such difference (i.e., Monthly Overhead Expenses Payment (-) the totaled amount evidenced by the Monthly Overhead Back-up Documentation = "x" difference). Any salary expenses included in the overall Monthly Overhead Expenses Payment shall only be for hired staff and shall not be for salary expenses associated with unfilled, vacant staff positions. Any salary expenses paid in the Monthly Overhead Expenses Amount for unfilled, vacant staff positions as discovered by the TDC in the Post Payment Reconciliation shall be deducted from the next available unpaid Monthly Overhead Expenses Payment. The final Monthly Overhead Expenses Payment

under the Contract shall be withheld from Contractor until the Monthly Overhead Back-up Documentation due for any prior months has been received and reconciled by the TDC. The TDC shall reduce and deduct any overpayments made to Contractor by the TDC in the previous months or any other amounts owed by Contractor under this Contract from the final Monthly Overhead Expenses Payment under the Contract. In the event that the final Monthly Overhead Expenses Payment is less than any overpayments or other amounts owed by Contractor, the TDC shall notify the Contractor and Contractor shall have fifteen (15) days from receipt of the notice to make payment to the TDC for any amounts owed by Contractor as provided in the notice.

(b) Other Expenses. In addition to the payment procedures for the monthly overhead expenses provided in subsection (a) above, Contractor may submit up to two payment requests per month to the TDC for any expenses related to Services performed under the Contract consistent with the Approved Annual Budget. Contractor's payment request shall be submitted on the payment request form attached hereto as **Exhibit C-2** and shall include copies of unpaid or paid third-party invoices, bills, receipts, accounting back-up, and such other requested documentation satisfactory to the TDC to allow and authorize payment under the Contract ("***Invoice Back-up Documentation***"). The TDC shall make payments to Contractor within forty-five (45) days after receipt of the payment request and Invoice Back-up Documentation. Contractor shall remit copies within thirty (30) days of Contractor's payment of all invoices and bills paid by Contractor that were submitted as unpaid invoices and bills in Contractor's Invoice Back-up Documentation. After Contractor receives payment under this Contract for any unpaid invoices, Contractor shall not cancel such contracts or Services without the prior approval of the TDC. If Contractor's TDC paid or reimbursed Services are canceled or 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 paid but unperformed or canceled Services. Additionally, TDC shall have the right at its option to reduce or offset any unspent and undisbursed funds remaining under the Contract by any amounts owed by Contractor under this Contract.

(c) No Advance Funds: Other Provisions. 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.

6. **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 any prior contracts (collectively, 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 6 is supplemental to Sections 3.9 (Ownership of Works) and 3.10 (Intellectual Property) of **Exhibit E** attached hereto.

7. **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.

8. **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.

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

10. **Other Contract Terms.** Contractor shall adhere to the General Terms and Conditions of Contract set forth on and attached to this Contract as **Exhibit E**.

11. **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.

12. **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) 630-7625
(904) 630-2906
Email: annetteh@coj.net

As to Contractor:

Jacksonville and the Beaches Convention & Visitors Bureau, Inc.
dba Visit Jacksonville
208 N. Laura St.
Jacksonville, FL 32202
Attn: Chair
(800) 733-2668
(904) 798-9104
Email: bprescott@heritagecapitalgroup.com

13. **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 Chair, 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.

14. **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.

15. **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.

16. **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.]

Sam E. Mousa
Chief Administrative Officer
For: Mayor Lenny Curry
Under Authority of:
Executive Order No. 2015-05

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

CITY:

ATTEST:

CITY OF JACKSONVILLE

By _____
John C. Sawyer, 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: 7393-13

Form Approved:

_____
Office of General Counsel

Countersigned by:

_____
Anna Lopez Brosche
Council President

CONTRACTOR:

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

By: _____
Print Name/Title: William R Prescott, Chair
Dated: 10-17-17

Exhibit A
Scope of Work

Scope of Services: During the Contract term, the Contractor shall perform the Tourist Bureau component services described in Section 666.108(b)(1), *Ordinance Code*, of the Tourist Development Plan, which provides as follows:

(i.) Visitor Centers. Operation and staffing of a visitor kiosk at the Jacksonville Airport, and visitor centers in Downtown Jacksonville and in the Beaches. Each Visitor Center shall be open a minimum of 50 hours per week. *(ii.) Comprehensive listings.* The establishment of continually updated comprehensive and all-inclusive listings of tourism businesses. *(iii.) Assembly of available information.* The assembly of available information on, or creation of maps and guides that identify attributes of the City for which tourists commonly search.

Exhibit B
Approved Budget

Tourist Bureau Transition Budget (3 Months)	
	OCT, NOV, DEC
	2017
EXPENSES	
VISITOR CENTER	
Salaries & Wages Airport	3,110
Salaries & Wages Ask	2,936
Salaries & Wages Green	25,216
Salaries & Wages Land	6,240
Sponsorship/Promotions	5,000
Landing VC Operating Expenses	1,475
Airport Operating Expenses	908
Greenleaf VC Operating Expenses	2,615
Publication Distribution	1,250
Database	5,000
Database/Research Staffing	18,750
Admin - Rent	6,250
TOTAL TOURIST BUREAU EXPENSES	78,750

Exhibit C-1
Monthly Overhead Expenses Payment Schedule

Below is the Payment Schedule for the Monthly Overhead Expenses for Fiscal Year 2017-2018, subject to the adjustments and reductions as set forth in Section 5 (Invoice and Payment) of this Contract. Payment shall be made based on the previous month's expenses in accordance with Section 5 of this Contract.

PAYMENT DATE	PAYMENT AMOUNT
October 31, 2017	$22,500.67
November 30, 2017	$22,500.67
December 31, 2017	$22,500.67
TOTAL	**$67,502.01**

Exhibit C-2
Payment Request Form

Name: _____

Address: _____
_____
Jacksonville, FL 32250

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	Florida Statutory Coverage
Employer's Liability	$ 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 $1,000,000 per Claim and Aggregate
(Including Media Professional)

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 this Contract. If any services, functions or responsibilities are not specifically described in 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. **Intentionally deleted.**

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. 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 affect 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. <u>Intellectual Property</u>.

(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 Contact 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 reprocurement 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 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.

3.46. **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.

3.47. **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.

3.48. **Reconciliation/True-up of City Funds**. City may make a written request at any time during the Contract term to Contractor for a reconciliation and true-up of Contractor's expenses paid by City under this Contract. Upon receipt of such request, Contractor shall provide City with copies of invoices, receipts, and all other supporting documentation as requested by City to assist the City in the reconciliation and true-up of prior City payments to Contractor. Contractor shall pay City any amounts owed by Contractor based on the reconciliation/true-up within fifteen (15) days receipt of City's written notice to Contractor regarding such amounts. Alternatively, in lieu of a payment from Contractor, City may reduce or offset any unspent and undisbursed funds remaining under the Contract at the time of the reconciliation/true-up by any amounts owed by Contractor under this Contract.

SINGLE SOURCE AWARD **BID # SS-0266-18**

Subject: Marketing Services for Tourist Bureau Services

Department: City Council

Description of Purchase: Recommend approval of single source award to Visit Jacksonville to provide marketing services for Tourist Bureau Services for 90 days from October 1, 2017 to December 31, 2017. Total not to exceed expenditure amount is $78,750.00.

Funding Source: CCTD132OP

This award is subject to appropriation by the City in the fiscal year beginning October 1, 2017. No funds have been appropriated to date. The City has no obligation for payment and work hereunder is not authorized unless funds are appropriated for the work herein. A written notification will be provided in the event that funds are appropriated.

Single Source Award To: Visit Jacksonville

Price Justification: See Attached

Total Award: $78,750.00 **Requisition #:** N/A

Attachments: Recommendation Memo, Single Source Form, Vendor Letter and Scope of Work

Certification as to Single Source: Annette R. Hasting, Executive Director, Duval County Tourist Development Council

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.206.

Analyst: Annette Burney

Gregory Pease, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

Teresa R. Eichner
CHAIRMAN

9/25/17
DATE

ACTION OF AWARDING AUTHORITY DATE: 9/27/17

APPROVED ✓ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION Anna Brooch

FORM GB-113, Revised 12/2007