

**INDIAN RIVER COUNTY IMPACT FEE
UPDATE STUDY CONSULTANT CONTRACT**

By and Between

**INDIAN RIVER COUNTY
And
TINDALE-OLIVER AND ASSOCIATES, INC.**

THIS CONTRACT FOR THE INDIAN RIVER COUNTY IMPACT FEE UPDATE STUDY between Indian River County, hereafter referred to as “County”, and Tindale-Oliver and Associates, Inc., Impact Fee Study Consultant, hereafter referred to as “Consultant” is entered into this 26th day of March, 2019.

I. Duration of the Contract

This contract is valid from March 26, 2019 until January 1, 2020 unless canceled by either Consultant or County, after a 30 day written notice. Consultant shall commence work within seven (7) days after receiving the notice to proceed, unless notice to proceed indicates otherwise. The contract may be extended upon written approval by the County.

II. Scope of Services

Scope of Services is attached to this contract as Appendix “A”.

III. Compensation Method (Fees)

The professional services described in the Scope of Services, including all travel expenses and other direct expenses, will be provided for a total cost of \$149,529.00.

1. County shall pay to Consultant a mutually agreed upon lump sum professional fee for each activity as shown on Appendix “B” of this contract, to be paid in monthly installments as invoiced by Consultant. Each monthly invoice will document the work performed. Upon submittal of an invoice documenting the completion of all or a portion of one or more of the Tasks listed in the Scope of Services, the County Project Manager will determine if the Tasks or portions thereof have been satisfactorily completed. Upon a determination of satisfactory completion, the County Project Manager will authorize payment to be made for the Task, Tasks, or portions thereof. All payments for services shall be made to Consultant by County in accordance with the Local Government Prompt Payment Act (Florida Statutes §218.70 et seq.)
2. The County Project Manager shall have the sole right to reduce (or eliminate, in whole or in part) any portion of the services at any time and for any reason, upon written notice to Consultant specifying the nature and extent of the reduction. In such event, Consultant shall be fully compensated for the services already performed and also for the services remaining to be done and not reduced or eliminated.

3. The County Project Manager may, at any time and for any reason, direct Consultant to suspend services (in whole or in part) under this Agreement. Such direction shall be in writing, and shall specify the period during which services shall be stopped. Consultant shall resume its Services upon the date specified, or upon such other date as the County Project Manager may thereafter specify in writing. Where County has suspended the services under this Agreement for a period in excess of six (6) months, the compensation of Consultant for such suspended services may be subject to modification. The period during which the services are stopped by County shall be added to the time of performance of this Agreement; provided, however, that any stoppage of services not approved or caused by the actions or inactions of County shall not give rise to any claim against County by Consultant.
4. The County, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, the County's performance and obligation to pay under this Agreement is contingent upon any annual appropriation by the Indian River County Board of County Commissioners.

IV. Insurance and Indemnification

1. Consultant shall not commence work on this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by County's representative.
2. Consultant shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Consultant and other persons employed or utilized by Consultant in the performance of this Agreement.
3. Consultant shall maintain during the term of this Agreement the following insurance:
 - A. Business Automobile Liability Insurance covering all owned, non-owned and hired vehicles with minimum limits of liability of \$500,000 per occurrence Combined Single Limit for bodily injury and property damage.
 - B. Commercial General Liability Insurance for premises/operations, products/completed operations, contractual liability, and independent contractors with a minimum combined single limit of \$500,000 per occurrence.
 - C. Worker's Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereinafter amended. The policy must include Employers Liability with a limit of \$100,000 for each accident, \$500,000 for disease (policy limit), and \$100,000 for disease (each employee).
4. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All such insurers must have an A.M. Best rating of no less than A - VII.

5. Consultant shall furnish certificates of insurance to County prior to the commencement of operations, which certificates shall clearly indicate that Consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the County.
6. Compliance with the foregoing requirements shall not relieve Consultant of its liability and obligations under this section or under any other portion of this Agreement.

V. Audit Rights

County reserves the right to audit the records of Consultant related to this contract at any time during the execution of the work included herein and for a period of three years after final payment is made. Bills for fees or other compensation for services or expenses shall be submitted to County in detail sufficient for a proper pre-audit and post audit thereof.

VI. Other Requirements and Legal Notices

- **Debarment**

Consultant certifies that he has not been debarred from bidding, proposing, or contracting for federal, state, or local government programs or activities.

- **Independent Contractor**

It is specifically understood and acknowledged by the parties hereto that Consultant or employees or subcontractors of Consultant are in no way to be considered employees of County, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

- **Assignment**

Consultant shall not assign this contract without the express written approval of County via executed amendment.

- **Miscellaneous**

1. The terms of this Agreement may be modified upon the mutual agreement of Consultant and County as confirmed in writing.
2. It is mutually agreed between County and Consultant that this Agreement, including all attachments to it, constitutes an agreement, made in Florida, and that it shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.
3. All remedies provided in this Agreement shall be deemed cumulative and additional, and not

in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

4. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

- **Written Notices**

Any notice of cancellation of this contract shall be in writing and given by certified mail, return receipt requested, or in person with proof of delivery, to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:

Consultant: Steve Tindale
Tindale-Oliver & Associates, Inc.
1000 North Ashley Drive
Suite 400
Tampa, FL 33602-3719

County: Stan Boling, AICP
Community Development Director
Indian River County
1801 27th Street
Vero Beach, FL 32960
Fax #: (772) 978-1806
Phone #: (772) 226-1253

- **Termination**

1. This Agreement may be terminated: 1) by County, for any reason, upon thirty (30) days prior written notice to Consultant; or 2) by Consultant, for any reason, following thirty (30) days prior written notice to County; or 3) by the mutual agreement of the parties; or 4) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.
2. In the event of termination by County, County's sole obligation to Consultant shall be payment for those portions of satisfactorily completed performed work previously authorized. Such payment shall be determined on the basis of the hours of work performed by Consultant, or the percentage of work complete as estimated by Consultant and agreed upon by County up to the time of termination. In the event of such termination, County

may, without penalty or other obligation to Consultant, elect to employ other persons to perform the same or similar services.

3. The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days prior written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
4. In the event that Consultant merges with another company, becomes a subsidiary or makes any other substantial change in structure or in the following principals or project manager Steve Tindale, P.E., County reserves the right to terminate this Agreement in accordance with its terms.
5. In the event of termination of this Agreement, Consultant agrees to surrender any and all documents prepared by Consultant for County in connection with this Agreement, of which County shall have full ownership thereof. Consultant shall retain copies of such documents for record purposes.
6. In the event that this Agreement is terminated by either party prior to Consultant's satisfactory completion of all work as described in the Scope, the project will be deemed abandoned, and no compensation will be paid by County to Consultant for tasks or portions thereof not yet satisfactorily completed.
7. County may unilaterally cancel this Agreement for refusal by Consultant to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by Consultant in conjunction with this Agreement.
8. County may terminate this Agreement in whole or in part if Consultant submits a false invoice to County.
9. County may terminate this Contract if Consultant is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.
10. County may terminate this Contract if Consultant, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

VII. CCNA Warranty and Truth-in-Negotiation Certificate

1. Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm other than a bonafide employee working solely for Consultant any fee, commission,

percentage, gift or other compensation, contingent upon or resulting from the award or making of this Agreement..

2. Execution of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged Consultant's most favored customer for the same or substantially similar service. The wage rates and costs shall be adjusted to exclude any significant sums should County determine that the wage rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants, if any such outside consultants are used with the prior written approval of County. County shall exercise its rights under this "Certificate" within one (1) year following final payment. County has the authority and right to audit Consultant's records under this provision. County does not hereby waive any other right it may have pursuant to Florida Statutes section 287.055, as it may be from time-to-time amended.

VIII. Responsibilities of the Consultant

1. The services rendered by Consultant shall be commenced upon written notice from the County. Consultant agrees to complete the Project within the time frame specified in the Scope of Services.
2. Consultant shall not commence work under this contract until it receives a written Notice to Proceed from the County.
3. Consultant shall submit copies of all proposed changes to the project scope of services for review and approval by County before authorization of any contract change order. After said review and approval by County, changes shall not be effective unless in writing and properly executed by the parties.
4. Consultant, as a part of the consideration hereof, does hereby covenant and agree that: 1) in connection with the furnishing of services to County hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to the services to be performed by Consultant under this Agreement on the grounds of such person's race, color, creed, national origin, religion, physical disability, age or sex; and 2) Consultant shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, as such rules, regulations, or guidelines may be from time to time amended.
5. Consultant shall designate a representative to keep County staff informed as to all aspects of the project work. The name and address of Consultant's designated representative is: Steve Tindale, 1000 North Ashley Drive, Suite 400, Tampa, FL 33602.
6. Consultant shall have all records and project work accessible for inspection and review by County at such time as is mutually agreeable to all parties.

7. Consultant shall keep and maintain financial, invoice, and employment records pertaining to the contractual obligation between County and Consultant for pre-audit and post-audit purposes for a period of three (3) years following the completion of all project work, or until all claims and audit findings involving the records have been received, whichever is later. County, or any of its duly authorized representatives shall have access to any books, documents, papers, and records of Consultant which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts, and transcription.
8. Consultant shall forward all documentation as it pertains to the project to the designated County Project Manager. Name: Stan Boling Address: Indian River County, 1801 27th Street, Vero Beach, FL 32960.
9. It is understood and agreed that all documents, including reports and other data prepared or obtained by Consultant in connection with its services hereunder, shall be delivered to, and become the property of, County prior to final payment to Consultant.
10. In connection with professional services to be rendered pursuant to this contract, Consultant further agrees to:
 - A. Maintain an adequate staff of qualified personnel.
 - B. Ensure that plans meet all current federal, state and local laws, rules, or ordinances applicable to the work.
 - C. Cooperate fully with County in the scheduling and coordination of all phases of the work.
 - D. Cooperate and coordinate with other County consultants, as directed by County.
 - E. Report the status of the work to County upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of County or its authorized agent at any time.
 - F. Interpret plans and other documents; correct errors and omissions and prepare any necessary plan revisions not involving a change in the scope of the work required, at no additional cost within thirty (30) calendar days of notice by County, or upon a determination of Consultant of the existence of such errors or omissions, whichever event shall first occur.
11. Consultant shall, during the entire term of this Contract, procure and keep in full force, effect, and good standing any and all necessary licenses, registrations, certificates, permits, and any and all other authorizations as are required by local, state, or federal law, in order for Consultant to render its services as described in this Agreement. Consultant shall also require all sub-consultants to comply with the provisions of this section.

IX. Responsibilities of the County

1. County shall provide Consultant access to appropriate records, documents, and other materials necessary to complete the project.

2. The County Project Manager shall represent County in all technical matters pertaining to the work and performance of this Contract, and his responsibilities shall include:
 - A. Examination of all reports, surveys, and other documents presented by Consultant and rendering, in writing, decisions pertaining thereto within a reasonable time so as not to materially delay the work of Consultant. For purposes of this contract, reasonable period of time will mean four (4) weeks from receipt of applicable material.
 - B. Transmission of instructions, receipt of information, interpretation and definition of County policies and decisions with regard to the work covered by this Contract.
 - C. Transmission of prompt written notice to Consultant whenever County observes or otherwise becomes aware of any defects or changes necessary in the project.

X. Prohibited Interests

No member, officer, or employee of County or of the member governments during his/her tenure or for two years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. This requirement also applies to any subcontract entered into by Consultant concerning this project.

XI. Public Entity Crime Affidavit

As provided by Florida Statute 287.133(2)(a), a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or a public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute 287.017 for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Any person must notify the County within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person. By its execution hereof, CONSULTANT certifies that neither it nor an affiliate is on the convicted vendor list.

XII. Entire Contract

This Contract and its Attachments hereto embody the whole agreement of the parties, and there are no provisions, terms, conditions, or obligations other than those contained herein. This Contract shall supersede all previous communications, representations, or oral agreements between the parties, and no amendment hereto shall be effective unless reduced to writing and signed by the parties hereto.

XII. Subcontracting

Services assigned to sub-consultants must be approved in advance by County. The sub-consultants

must be qualified by County to perform all work assigned to them.

XIII. Public Records Compliance

A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

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

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of the Consultant to comply with these requirements shall be a material breach of this Agreement.

IN WITNESS OF THE FOREGOING, the parties have read this contract and attachments to it and have affixed their signatures, effective on the date first appearing above.

Consultant:

INDIAN RIVER COUNTY
By its Board of County Commissioners

By _____

By _____
Bob Solari, Chairman

Printed Name and Title

Date Approved by BCC: _____

Date _____

Witness:

Attest: Jeffrey R. Smith, Clerk of Court
And Comptroller

By _____

By _____

Printed Name and Title

Deputy Clerk

Date _____

Approved:

Jason E. Brown
County Administrator

Approved as to form and legal
sufficiency:

William K. DeBaal
Deputy County Attorney

Project Approach & Project Schedule Report on file in the planning office.