
SAMPLE AGREEMENT

THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called COUNTY) and _____ (hereinafter called BROKER). COUNTY and BROKER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION I RECITALS

WHEREAS, BROKER is licensed in the State of Florida; and

WHEREAS, COUNTY wishes to contract with BROKER(s) to provide brokerage, marketing, advisory and other associated services for the sale of properties owned by the County based on the terms and subject to the conditions contained herein; and

WHEREAS, BROKER is qualified, willing and able to provide the Scope of Services and work for brokerage services on the terms and conditions set forth herein; and

WHEREAS, COUNTY desires to enter into this Agreement with BROKER to perform the Scope of Services and work / services as specified and, with a commission payment based on the sale or lease of said properties as a percentage of the actual sale or rent amount as delineated in the schedule agreed upon below.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein name, the Parties agree as follows:

The Recitals set forth above are hereby incorporated into this Agreement and made a part of hereof for reference.

SECTION II NOTICES

All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person, sent by certified mail with return receipt request, email or fax and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Agreement.

Firm/BROKER:

County Contract Administrator:
Jennifer Hyde
Purchasing Manager
Indian River County
1800 27th St, Building B, Vero Beach, FL 32960
Email: purchasing@ircgov.com

SECTION III DESCRIPTION OF SERVICES TO BE PROVIDED

The County of Indian River is seeking proposals from national, regional and local licensed commercial real estate agencies that have the experience, nationwide network reach, infrastructure and personnel to market, secure and sell or lease real estate owned by the County. The professional real estate broker services required by the County in connection with this RFP covers the entire spectrum of those services customarily provided by commercial real estate brokers and/or firms. Such professional real estate services that may be required to be provided to the County include but are not limited to the following:

- Competitive Market Analysis (CMAs).
- Advertising Plan(s).
- Promotion Venues- (refers to how and through what venues you intend to promote the property).
- Develop sale and/or lease strategies.
- Develop and distribute marketing materials to potential buyers and/or tenants and report results to the County on an agreed upon frequency.
- Participate in site tours and/or other events concerning a showing of the property.
- Analyze and qualify offers from potential buyers.
- Presentations at public meetings may be required.
- Recommendation or repair, inspection or maintenance issues that are critical to the ability to sale or lease the property.
- Showing of properties.
- Negotiating with buyers on behalf of the County.
- Property Listing and Sales Services.
- Conduct background checks, credit and reference checks on any tenants.
- All other customary brokerage activities and services associated with real estate transactions.

1. The County is currently evaluating all County owned property and identifying properties to be sold and/or leased. Current zoning on identified parcels will vary. The Board of County Commissioners may consider Future Land Use amendments and rezoning of individual properties to the 'highest and best' classification for maximum valuation. In addition, to appeal to the investment community, the County may bundle properties by either zoning classification, geographic area, or other potential groupings as suggested by the Broker / Agent selected.

2. The Broker/Agent will provide integrated listing and marketing services including, but not limited to, CoStar and Multiple Listing Service (MLS), and other professional listing services (residential, commercial, etc.), appropriately placed advertising, targeted marketing, advice for maximizing building interior or curb appeal, proposing redevelopment potential to developers and investors, showing the property to prospective buyers or tenants and procuring offers to buy or lease the property as determined by the County. These services will include, at a minimum, the following deliverables:

- Establish a national and local marketing strategy that employs multiple types of advertising including, but not limited to, internet exposure (MLS, CoStar, LoopNet, etc.), signs, email blasts, trade group event attendance, alternate trade publication strategies, etc.; to yield the highest financial benefit for the County. All advertising is at the expense of the listing agent.

- Verify current zoning of excess County properties and support County staff in rezoning of parcels to maximize market value based on the 'highest and best' use permitted by the Indian River County Zoning Ordinances and Comprehensive Plan.
- Accurately list the property with the Multiple Listing Services (MLS) and any other appropriate listing service for this type of property.
- Provide technical assistance and advice on the presentation of the property for sale or lease.
- Study the relevant market factors and advise the County on how current market conditions may affect the sale or lease of the property.
- Prepare a list of comparable sites and their asking prices or rents and recommend a listing price or rent, tenant improvement levels, and concessions.
- Identify competing properties and how the County property may compete successfully.
- Coordinate real estate appraisals.
- Identify the type(s) of buyers or tenants that would be attracted to the property.
- Determine that the buyer or tenant is qualified financially to close the purchase or lease.
- Forward offers to the designated County contact person for consideration of sale or lease.
- Assist with the sale or lease negotiations for accepted offers.
- Assist with all pre-closing, closing and post-closing matters.

3. No additional payments will be made over and above the agreed upon commission rate to any Broker/Agent for any reason and no payment will be made or due if the property is not sold or leased during the Agreement period, unless otherwise agreed to in writing.

SECTION IV TERM

The term of this Agreement is two years, with two additional two-year renewals available. Renewals shall be based on the mutual agreement between the County and the BROKER to provide the identical services required under this Agreement as outlined in the Scope of Services and maintain the same terms, conditions, and revenue / commission payment structure as delineated herein. All renewals must be offered in writing at least ninety (90) days prior to the termination of this Agreement period.

NOTE: BROKER may exercise the option to renew by submitting a written submission ninety (90) days prior to the termination of the Agreement period.

SECTION V COMPENSATION

The total amount to be paid by the County to the Broker shall be strictly limited to a fee based on an agreed upon commission rate of _____% of the Purchase Price or Rental Rate of the property (the "Broker Fee"). It is expressly understood by the Broker that Broker is entitled to receive compensation under this Agreement only in the event the Broker is the procuring agent of the buyer or tenant of the property and the real estate transaction between the County and the buyer or tenant is fully consummated. Payment of the Broker Fee will be disbursed in full at the closing of the sale or lease of the property.

The Broker shall not be paid additional compensation for any loss, and/or damage arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulties encountered in the prosecution of the work, or for any expenses incurred by or in consequence of the suspension or discontinuance of the work.

The Broker shall not be paid any compensation what so ever for a sale or lease of the property to any current interested parties that were either not found by the Broker or have contacted the County directly without using the services of the Broker. Therefore, the Broker will not be entitled to receive any commission or portion of the Broker Fee in the event the County closes a real estate transaction with a purchaser or lessee that was not found, produced or procured by the Broker. The Broker is not entitled for any additional payment except for the Broker Fee stated above for all services provided under this Agreement.

However, the Broker shall be entitled to receive payment of the Broker Fee if a sale or lease of the property is made within three (3) months after the termination or expiration of this Agreement to a party that was found by the Broker and entered into a Letter of Intent to purchase with the County as a client during the Agreement term, and any extensions thereof.

No additional payments will be made over and above the agreed upon commission rate to any Broker / Agent for any reason and no payment will be made or due if the property is not sold during the Agreement period, except as may be provided above.

Taxes. Vendor is responsible for all federal, state, and local taxes and other charges related to the performance of this Agreement.

SECTION VI WORK CHANGES

The County reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Agreement, and agrees to make corresponding adjustments in the Agreement price and time for completion. Any and all changes must be authorized by a written change order signed by the County's Purchasing Agent or his designee as representing the County. Work shall be changed and the Agreement price and completion time shall be modified only as set out in the written change order. Any adjustment in the Agreement price resulting in a credit or a charge to the County shall be determined by mutual agreement of the parties before starting the work involved in the change.

SECTION VII CONFORMANCE WITH PROPOSAL

It is understood that the materials and/or work required herein are in accordance with the proposal made by the BROKER pursuant to the Request for Proposal and Specifications on file in the County Purchasing Division. All documents submitted by the BROKER in relation to said proposal, and all documents promulgated by the County for inviting proposals are, by reference, made a part hereof as if set forth herein in full.

SECTION VIII INDEMNIFICATION/HOLD HARMLESS

BROKER agrees to indemnify, defend and hold harmless, the County, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of BROKER, agents, laborers, sub-brokers or other personnel entity acting under BROKER control in connection with the BROKER's performance of services under this Agreement and to that extent BROKER shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the County in defense of such claims and losses including appeals. That the aforesaid hold-harmless Agreement by BROKER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of BROKER or any agent laborers, sub-brokers or employee of BROKER regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. BROKER shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by BROKER on the work. This indemnification shall survive the termination of this Agreement.

SECTION IX SOVEREIGN IMMUNITY

Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the County's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

SECTION X INSURANCE

The Broker shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Broker are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Broker under the Agreement.

The parties agree and recognize that it is not the intent of Indian River County that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than Indian River County and the County shall not be obligated to provide any insurance coverage other than for Indian River County or extend its sovereign immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party

to obtain insurance coverage for this project, any obligation to name Indian River County as an additional insured under any other insurance policy, or otherwise protect the interests of Indian River County as specified in this Agreement.

Workers' Compensation Insurance & Employer's Liability: The Broker shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: The Broker shall agree to maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence \$1,000,000

Personal/advertising injury \$1,000,000

Products/completed operations aggregate \$2,000,000

General aggregate \$2,000,000

Fire damage \$100,000 any 1 fire

Medical expense \$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the County. Coverage shall extend to independent Brokers and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests' provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Agreement has been endorsed to include Indian River County, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability policy and Business Auto policy. The name for the Additional Insured endorsement issued by the insurer shall read **"Indian River County, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, its officers, employees and agents"** and shall include **"Agreement RFP# 2021011 Real Estate Broker Services."** The Policy shall be specifically endorsed to provide thirty (30) day written notice to the County prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the County is amended during the term of this Agreement to exceed the above limits, the Broker shall be required, upon thirty (30) days written notice by the County, to provide coverage at least equal to the amended statutory limit of liability of the County. Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. All independent Brokers and Sub-Brokers utilized in this

project shall furnish a Certificate of Insurance to the County in accordance with the same requirements set forth herein.

Automobile Liability Insurance: The Broker shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Broker does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Broker to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary basis.

Professional Liability: Broker shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the County reserves the right, but not the obligation, to review and request a copy of Broker's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Broker warrants the retroactive date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement, Broker shall agree to purchase a SERP with a minimum reporting period not less than three (3) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.

Waiver of Subrogation: The Broker shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss Agreement to waive subrogation without an endorsement then Broker shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Broker enter into such a Agreement on a pre-loss basis.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Broker for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, Indian River County reserves the right, but not obligation, to review and request a copy of the Proposer's most recent annual report or audited financial statement.

It shall be the responsibility of the Broker to ensure that all independent Brokers and/or Sub-Broker's comply with the same insurance requirements referenced above.

The Broker may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the County shall be endorsed as an "Additional Insured."

The County, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or

endorsements, herein from time to time throughout the term of this Agreement. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of the Broker to execute the Agreement and/or punctually deliver the required insurance, and other documentation may be cause for annulment of the award.

SECTION XI ACTS OF GOD

The BROKER shall be responsible for all preparation of the site for Acts of God, including but not limited to; earthquake, flood, tropical storm, hurricane or other cataclysmic phenomenon of nature, rain, wind or other natural phenomenon of normal intensity, including extreme rainfall. No reparation shall be made to the BROKER for damages to the Work resulting from these Acts. The County is not responsible for any costs associated with pre or post preparations for any Acts of God.

Emergencies – In the event of emergencies affecting the safety of persons, the work, or property, at the site or adjacent thereto, the BROKER, or his designee, without special instruction or authorization from the County, is obligated to act to prevent threatened damage, injury or loss. In the event such actions are taken, the BROKER shall promptly give to the County written notice and contact immediately by phone, of any significant changes in work or deviations from the Agreement documents caused thereby, and if such action is deemed appropriate by the County a written authorization signed by the County covering the approved changes and deviations will be issued.

SECTION XII PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS

Subject to the laws of the State of Florida and of the United States, neither BROKER nor any Sub-BROKER supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Agreement against the County. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

SECTION XIII COMPLIANCE WITH LAWS

The BROKER shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Agreement. All materials furnished and works done are to comply with all federal, state, and local laws and regulations. BROKER will comply with all requirements of 28 C.F.R. § 35.151. BROKERS and Sub-BROKER, shall comply with § 119.0701, Fla. Stat. (2013).

SECTION XIV RECORDS

Indian River County is a public agency subject to Chapter 119, Florida Statutes. The BROKER shall comply with Florida's Public Records Law. Specifically, the BROKER 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 Agreement term and following completion of the Agreement if the BROKER does not transfer the records to the County.

(4) Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the BROKER or keep and maintain public records required by the County to perform the service. If the BROKER transfers all public records to the County upon completion of the Agreement, the BROKER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the BROKER keeps and maintains public records upon completion of the Agreement, the BROKER 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.

(5) **IF THE BROKER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BROKER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, 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

(6) Failure of the BROKER to comply with these requirements shall be a material breach of this Agreement.

SECTION XV INSPECTION AND CORRECTION OF DEFECTS

Deductions - In the event the County deems it expedient to perform work which has not been done by the BROKER(s) as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the BROKER(s) as required in these Specifications, all expenses thus incurred by the County, in the County's option, will be invoiced to the BROKER(s) and/or may be deducted from payments due to the BROKER(s). Deductions thus made will not excuse the BROKER(s) from other penalties and conditions contained in the Agreement.

SECTION XVI SCRUTINIZED COMPANIES

BROKER certifies that it and those related entities of BROKER as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, BROKER certifies that it and those related entities of BROKER as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized

Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria. may terminate this Agreement if BROKER 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.

COUNTY may terminate this Agreement if BROKER, 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.

SECTION XVII ADDITIONAL REQUIREMENTS

In the event of any conflict between the terms and conditions, appearing on any purchase order issued relative to this Agreement, and those contained in this Agreement and the Specifications herein referenced, the terms of this Agreement and Specifications herein referenced shall apply.

County's Public Relations Image – The BROKER's personnel shall at all times handle complaints and any public contact with due regard to the County's relationship with the public. Any personnel in the employ of the BROKER involved in the execution of work that is deemed to be conducting him/her self in an unacceptable manner shall be removed from the project at the request of the County Manager.

Dress Code – All personnel in the employ of the BROKER(s) shall be appropriately attired. Employees engaged in the course of work shall wear company uniforms neat and clean in appearance, readily identifiable to all County employees and the public. No tee shirts with obscene pictures or writings will be allowed. Swimsuits, tank tops, shorts and sandals are also prohibited. Safety toed shoes shall be worn at all times.

Patent Fees, Royalties, and Licenses – If the BROKER requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the BROKER and his surety shall indemnify and hold harmless the County from any and all claims for infringement in connection with the work agreed to be performed. The BROKER shall indemnify the County from any cost, expense, royalty or damage which the County may be obligated to pay by reason of any infringement at any time during the prosecution of or after completion of the work.

Permits - The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation. The selected Proposer shall be required to complete a **W-9 Taxpayer Identification Form**, provided with the County's Agreement, and return it with the signed Agreement and insurance documents.

Cooperative Purchasing Agreement - This Agreement may be expanded to include other governmental agencies. BROKER(s) may agree to allow other public agencies the same items at the same terms and conditions as this Agreement, during the period of time that this Agreement is in effect. Each political entity will be responsible for execution of its own requirements with the BROKER.

Contractual Relations - The BROKER(s) are advised that nothing contained in the Agreement or specifications shall create any contractual relations between the County and Sub-BROKER of the BROKER(s).

Length of Notice/Advertising Time – Actual times will be determined by County and BROKER on a case-by-case basis.

SECTION XVIII ASSIGNMENT

BROKER shall not delegate, assign or subcontract any part of the work under this Agreement or assign any monies due him hereunder without first obtaining the written consent of the County.

SECTION XIX TERMINATION, DELAYS AND LIQUIDATED DAMAGES

If the BROKER refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in this Agreement, or as may be modified in accordance with this Agreement, the County by written notice to the BROKER, may terminate BROKER's rights to proceed. On such termination, the County may take over the work and prosecute the same to completion, by Agreement or otherwise, and the BROKER and his sureties shall be liable to the County for any additional cost incurred by it in its completion of the work.

The County may terminate this Agreement with or without cause by giving the BROKER thirty (30) days' notice in writing. Upon delivery of said notice, the BROKER shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all related existing third-party Agreements. Termination of the Agreement by the County pursuant to this paragraph shall terminate all of the County's obligations hereunder, and no charges, penalties or other costs shall be due BROKER except for work timely completed.

The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days 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. In the event of any termination, the terminating party will be paid all compensation earned for services performed through the date of cancellation.

SECTION XX LAW, VENUE AND WAIVER OF JURY TRIAL

This Agreement is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce this Agreement shall be in Indian River County, Florida.

The Parties to this Agreement hereby freely, voluntarily and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

SECTION XXI APPROPRIATION APPROVAL

The BROKER acknowledges that the Indian River County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the County Council. The BROKER agrees that,

in the event such appropriation is not forthcoming, this Agreement may be terminated by the County and that no charges, penalties or other costs shall be assessed.

SECTION XXII TRUTH-IN-NEGOTIATIONS

In accordance with the provisions of Section 287.055, Florida Statutes, the BROKER agrees to execute a truth-in-negotiations certificate and agrees that the original Agreement price and any additions may be adjusted to exclude any significant sums by which the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

SECTION XXIII CONFLICT OF INTEREST

The County hereby acknowledges that the BROKER may be performing professional services for private developers within the Treasure Coast area. Should a conflict of interest arise between providing services to the County and/or other clients, the BROKER shall terminate its relationship with the other client to resolve the conflict of interest. The County Manager shall determine whether a conflict of interest exists. At the time of each Project Proposal the BROKER shall disclose all of its Treasure Coast clients and related Scope of Work.

SECTION XXIV PROHIBITION AGAINST CONTINGENT FEES

The BROKER warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the BROKER to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the BROKER any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

SECTION XXV ATTORNEY'S FEES

If this matter is placed in the hands of an attorney for collection, or in the event suit or action is instituted by the County to enforce any of the terms or conditions of the Agreement, BROKER shall pay to the County, in such suit or action in both trial court and appellate court, the County's costs, and reasonable attorney's fees for the anticipated cost of collection and judgment enforcement.

SECTION XXVI CODE OF ETHICS

BROKER warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in Chapter 112.311 et seq., Florida Statutes, and Code of Ethics Ordinances in Section 9.14 of Indian River County Code.

SECTION XXVII POLICY OF NON-DISCRIMINATION

BROKER shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. BROKER shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status,

physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

SECTION XXIII SEVERABILITY

The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

IN WITNESS WHEREOF, COUNTY and BROKER have signed this Agreement in duplicate. One counterpart each has been delivered to COUNTY and BROKER. All portions of the Agreement Documents have been signed or identified by COUNTY and BROKER or on their behalf.

This Agreement will be effective on _____, 20____ (the date the Agreement is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:

BROKER:

INDIAN RIVER COUNTY _____

By: _____
Joseph E. Flescher, Chairman

By: _____
(BROKER)

By: _____
Jason E. Brown, County Administrator

(CORPORATE SEAL)

Attest _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk

(SEAL)