

RESOLUTION NO. 2021 - 290

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN AGREEMENT FOR MARKETING AND DEVELOPMENT SERVICES WITH THE ST. JOHNS COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY ON BEHALF OF ST. JOHNS COUNTY; AND PROVIDING FOR THE EFFECT OF RECITALS; PROVIDING FOR THE CORRECTION OF ERRORS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, as authorized by Section 125.045, Florida Statutes, the County engages in the expenditure of public funds to attract and retain business enterprises for the purpose of enhancing economic development within St. Johns County; and

WHEREAS, the IDA was created pursuant to Chapter 159, Florida Statutes, for the purpose of financing and refinancing projects for the public purposes described in the Florida Industrial Development Financing Act and for the purpose of fostering economic development within the County; and

WHEREAS, in recognition of their shared purpose of fostering and enhancing economic development within St. Johns County, the County and the IDA desire to create a countywide economic development brand as provided in this Agreement; and

WHEREAS, when preparing the Fiscal Year 2021 Budget, the County was unaware of the availability of this revenue; and

WHEREAS, the County will recognize and appropriate the funding associated with this agreement up to \$250,000 into the Fiscal Year 2021 Budget; and

WHEREAS, the County has determined that entering into this Agreement serves a proper public purpose and is in the best interests of the residents of St. Johns County.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, THAT:

SECTION 1. Incorporation of Recitals.

The Recitals expressed above are incorporated by reference into the body of this Resolution, and such Recitals are hereby adopted as findings of fact.

SECTION 2. Authorization to Execute.

The County Administrator, or designee, is hereby authorized to execute an agreement substantially in the same form as the attached Agreement for Marketing and Development Services

on behalf of the County for the purposes mentioned above.

SECTION 3. Correction of Errors.

To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

SECTION 4. Effective Date.

This Resolution shall be effective upon execution by the Chair of the Board of County Commissioners.

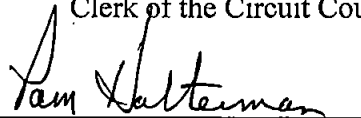
PASSED AND ADOPTED by the Board of Board of County Commissioners of St. Johns County, Florida this 20 day of July 2021.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA


By: Jeremiah R. Blocker, Chair

ATTEST: Brandon J. Patty,
Clerk of the Circuit Court & Comptroller

RENDITION DATE 7/21/21


By: Deputy Clerk



AGREEMENT FOR MARKETING AND BRAND DEVELOPMENT SERVICES

THIS AGREEMENT FOR MARKETING AND BRAND DEVELOPMENT SERVICES (Agreement) is entered into by and between St. Johns County, Florida, a political subdivision of the State of Florida ("County"), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and St. Johns County Industrial Development Authority ("IDA"), a special district of the State of Florida whose primary business address is 500 San Sebastian View, St. Augustine, Florida 32084.

RECITALS:

WHEREAS, as authorized by Section 125.045, Florida Statutes, the County engages in the expenditure of public funds to attract and retain business enterprises for the purpose of enhancing economic development within St. Johns County; and

WHEREAS, the IDA was created pursuant to Chapter 159, Florida Statutes, for the purpose of financing and refinancing projects for the public purposes described in the Florida Industrial Development Financing Act and for the purpose of fostering economic development within the County; and

WHEREAS, in recognition of their shared purpose of fostering and enhancing economic development within St. Johns County, the County and the IDA desire to create a countywide economic development brand as provided in this Agreement; and

WHEREAS, the County has determined that entering into this Agreement serves a proper public purpose and is in the best interests of the residents of St. Johns County.

NOW THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the County and the IDA agree as follows:

ARTICLE 1. Incorporation of Recitals.

The above Recitals are incorporated into the body of this Agreement, and such Recitals are adopted as findings of fact.

ARTICLE 2. Term and Extension.

a. This Agreement shall be effective on _____, and shall be in effect for one year.

b. Provided that this Agreement has not been terminated by either party in accordance with the provisions contained herein prior to the end of the effective term, this Agreement may be extended annually at the mutual agreement of the parties for one (1) year periods (individually an "Extended Term"). The Initial Term together with any Extended Term(s), shall constitute the Full Term of the original agreement.

c. While this Agreement may be extended as stated in this Article, it is expressly understood that neither party is under any obligation to extend this Agreement.

ARTICLE 3. Termination.

a. If, within ninety (90) days of the effective date of this Agreement, either party wishes to terminate this Agreement without cause, such party may terminate this Agreement by providing at least forty-eight (48) hours written notice to the other party. Otherwise, this Agreement may be terminated by either party without cause by providing at least sixty (60) days advance written notice to the other party of such notice of termination without cause.

b. This Agreement may be terminated with cause by either party, subject to the Notice of Default and Right to Cure requirements provided in Article 9. Notice of either party's intent to terminate this Agreement for cause shall be in writing, indicate the exact cause for termination and include the effective date of termination of this Agreement.

c. Consistent with other provisions of this Agreement, the County shall be reimbursed for any and all expenses that were both authorized under this Agreement and performed or accrued prior to the effective date of the termination of this Agreement.

ARTICLE 4. Scope of Services.

To the extent permitted by law, the County shall use all reasonable efforts (1) to perform all tasks included in the Scope of Services, attached hereto as Attachment A and incorporated herein; (2) to perform any duties or obligations arising from the Scope of Services or as described elsewhere in this Agreement; and (3) to timely deliver the reports and other items included within the amended Scope of Services.

The IDA hereby grants the County the right to use its name and service marks in its marketing materials or other oral, electronic, or written promotions in the course of its performances of services under this Agreement.

ARTICLE 5. Subcontractors

The IDA acknowledges that the County may engage third party suppliers and other vendors and subcontractors (Subcontractors) from time to time to provide services under this Agreement. The County shall supervise such services and endeavor to guard against loss to the IDA as the result of the Subcontractors' failure to properly execute their commitments, but the County shall not be responsible for such failure except to the extent that the failure is due to the County's negligence or willful misconduct.

ARTICLE 6. Third Party Licenses

To the extent that the County requires the purchase of third party licenses for any third party products in order to perform services under this Agreement, the IDA shall be responsible for purchasing such products. Such products may include, but are not limited to, server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work that the County deems necessary in order to perform services under this Agreement.

ARTICLE 7. Compensation/Reimbursement.

As compensation for the services rendered by the County under this Agreement, the IDA agrees to pay the County the fees set forth in the Scope of Work. Subject to the limitations and conditions set forth in the Scope of Work, the IDA shall reimburse the County for reasonable out-of-pocket expenses, including, but not limited to, transportation, lodging, mileage, meals, and other incidental expenses (collectively, the "Expenses") incurred in connection with the County's rendering services under this Agreement. For the purposes of this Agreement, incidental expenses shall include all expenses incurred in connection with the County's provision of services under this Agreement, including, but not limited to, the cost of packaging material for shipping; postage, messenger, and shipping charges; copyright or trademark charges; website hosting charges; and any advertising costs associated with radio, print, online, or other media sources.

The total compensation to the County under this Agreement shall not exceed two hundred fifty thousand dollars (\$250,000.00). The County shall submit invoices to the IDA for services performed under this Agreement. Within ten (10) business days following its receipt of the County's invoice, the IDA shall verify it. Within fifteen (15) days following the IDA's verification of the invoice, the IDA shall forward payment thereof to the County. The IDA reserves the right to request additional document/information with respect to any invoice submitted by the County. Under such circumstances, the timeframe for payment will be extended by the time necessary to receive a verified bill/invoice.

ARTICLE 8. Default.

Events of Default shall include any of the following:

- a) Failure by either party to comply with one or more terms, provisions, conditions, requirements, or obligations set forth in this Agreement;
- b) Substandard performance in one or more evaluative areas, as noted in a Periodic Evaluation as provided for elsewhere in this Agreement;
- c) Assignment of this Agreement by either party without the prior written approval of the other party;
- d) Failure by the IDA to pay, for a period exceeding ninety (90) days, any amounts due and owing for authorized work performed by the County;
- e) Failure by the IDA to appropriate funding for the Services and/or expenses noted in this Agreement;
- f) Exhaustion of the funds appropriated for the Services and/or expenses provided for in this Agreement;
- g) A subsequent revision/change/amendment to State law that would prohibit the County and the IDA from entering into, or continuing, this Agreement; and
- h) Failure by the either party to comply with Chapter 119, Florida Statutes (Florida Public Records Law).

ARTICLE 9. Notice of Default and Right to Cure.

a. Should either party default (fail to perform) under the terms of this Agreement, the non-defaulting party shall provide written notice to the defaulting party, which notice shall include a timeframe of no fewer than thirty (30) calendar days in which to cure the default. In the event the defaulting party fails to cure the default within the timeframe provided in the original notice

of default (or any such other amount of time mutually agreed to by the parties in writing), the non-defaulting party may exercise any or all of its administrative or legal remedies. Notwithstanding any other provision contained in this Agreement, Events of Default based upon the County's non-appropriation of funds or amendments to State law shall not be subject to a right to cure as provided herein.

b. For any alleged breach or violation of this Agreement that may give rise to either an administrative or judicial action, or both, against the County, the IDA must provide written or electronic notice to the County within 30 days following the occurrence of the alleged breach or violation. It is acknowledged that this paragraph provides a means of notice that is different from that which is provided in the preceding paragraph.

ARTICLE 10. Remedies Upon Default.

Upon the occurrence of an Event of Default or of any other breach or violation of this Agreement, the other party, after giving notice and allowing the defaulting party the opportunity to cure as provided elsewhere in this Agreement, may at any time during the continuance of any default:

- a. terminate this Agreement for cause; and
- b. utilize any and all other remedies now or hereafter existing under the common law or statutory law of the State of Florida.

All remedies granted hereunder shall be cumulative and not exclusive.

ARTICLE 11. Force Majeure.

Neither party shall be held in non-compliance with the terms, conditions, provisions, or requirements of this Agreement, nor suffer any enforcement or penalty relating thereto (including termination, cancellation, or revocation of this Agreement) if such non-compliance or alleged default occurred or was caused by a strike, riot, war, earthquake, flood, tsunami, severe rainstorm, hurricane, or other act of nature, or other event that is reasonably beyond either party's ability to anticipate or control.

ARTICLE 12. Notice.

a. Any notice to the County that is permitted or required hereby shall be delivered either by hand (receipt of delivery required) or by certified mail to:

County Administrator
500 San Sebastian View
St. Augustine, Florida 32084

With copies to:

Economic Development Specialist
500 San Sebastian View
St. Augustine, Florida 32084

Office of the County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

b. Any notice to the IDA that is permitted or required hereby shall be delivered either by hand (receipt of delivery required) or by certified mail to:

c. All other correspondence, not constituting official notice hereunder, may be delivered, disseminated, or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing, or text messaging.

ARTICLE 13. Public Records.

A. The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

B. In accordance with Florida law, to the extent that the County's performance under this Contract constitutes an act on behalf of the IDA, the County shall comply with all requirements of Florida's public records law. Specifically, if the County is expressly authorized, and acts on behalf of the IDA under this Agreement, the County shall:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the Services;

(2) Upon request from the IDA's custodian of public records, provide the IDA 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 as provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) Ensure that public records related to this Agreement that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable law for the duration of this Agreement and following completion of this Agreement if the County does not transfer the records to the IDA; and

(4) Upon completion of this Agreement, transfer, at no cost, to the IDA all public records in possession of the County or keep and maintain public records required by the IDA to perform the Services.

C. If the County keeps and maintains public records upon completion of this Agreement, the County shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the IDA, upon request from the IDA's custodian of public records, in a format that is compatible with the IDA's information technology systems.

D. Failure by the County to comply with the requirements of this section shall be grounds for immediate, unilateral termination of this Agreement by the IDA.

IF THE IDA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: OCA, ATTN: Public Records Manager, 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FL 32084, PH: (904) 209-0805, EMAIL: publicrecords@sjcfl.us.

ARTICLE 14. Ownership of Deliverables/Work Product

a. It is expressly noted that all work product and deliverables, including final work product, submitted by the County to the IDA that are associated with the Scope of Services detailed in this Agreement, shall become the property of, and owned and controlled by the IDA, upon receipt and payment by the IDA.

b. By way of illustration, but not limitation, all slogans, ideas, or plans submitted or developed by the County for the IDA during the term of this Agreement, whether or not used, and, any and all, layouts, copy, art work, electronic files, films, digital impressions, and other tangible material, of whatever form, format, content, or creative or technological design, which the County prepares for the IDA that is associated with the above-referenced Services, shall become the property of, and owned and controlled by the IDA, upon receipt and payment to the County of any applicable periodic bill/invoice.

c. Notwithstanding the provisions of Section 14(a) above, it is understood that County often licenses materials from third parties for inclusion in Work Product. In such circumstances, ownership of such licensed materials remains with the licensor, and the IDA agrees that it remains bound by the terms of such licenses and that it does not obtain proprietary rights to such third party materials beyond the terms and conditions contained in the pertinent license. The County will keep the IDA informed of any such limitation.

d. Notwithstanding any other provision of this Agreement, the County shall retain all rights, title and interest in and to, including any intellectual property rights with respect to any data, designs, processes, specifications, software, applications, source code, object code, methodologies, know-how, materials, information and skills (and any derivative works, modifications, and enhancements thereto) owned, acquired, or developed by County or its licensors, and regardless of whether incorporated in any Work Product, (i) prior to the Effective Date; (ii) independently of, or not in connection with the performance of, the Services; (iii) in the general conduct of its business or to serve general functions that are not specific to the IDA's unique requirements; or (iv) if generally applicable, non-site specific, and unrelated to the "look and feel" of the Materials or other deliverables in connection with the Services (or partially in

connection with the Services) (collectively, "County Materials"). To the extent that the County Materials are actually incorporated into Work Product pursuant to this Agreement, the County grants the IDA a perpetual, royalty-free, non-exclusive license to use such County Materials as necessary for the use, management, and maintenance of such Work Product, provided that the IDA shall not have the right to distribute or publish County Materials (other than as part of the Work Product) or to create derivative works of County Materials.

ARTICLE 15. Assignment.

In light of the scope and rationale for this Agreement, neither the County nor the IDA, without the prior express written approval of the other party, may assign, transfer, or sell any of the rights noted in this Agreement. Should either the County or the IDA assign, transfer, or sell any of the rights noted in this Agreement, without such prior express written approval of the other party, such action shall result in the automatic termination of this Agreement without further notice or action required.

ARTICLE 16. Merger and Amendment.

This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein. This Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters. Both the County and the IDA mutually agree that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and the IDA.

ARTICLE 17. Disputes.

In the event a dispute should arise relating to either party's performance under this Agreement, the parties agree to use good faith efforts to resolve the dispute without resort to judicial or quasi-judicial authorities. In the event such good faith efforts fail to resolve the dispute, either party may seek relief or redress in the courts. Each party irrevocably submits itself to the personal jurisdiction of the courts of the State of Florida, St. Johns County, and the personal jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, for the purpose of any suit, action or other proceedings arising out of or in connection with this Agreement or its subject matter. Each party agrees that it will bring any such proceeding only in one of such courts.

ARTICLE 18. Discrimination.

The IDA shall conform to the following Equal Employment Opportunity Statement: No person shall, on the grounds of race, creed, color, handicap, national origin, sex, age, political affiliation or beliefs be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole, or in part, with funds made available by the County.

ARTICLE 19. Compliance with Local, State, and Federal Rules, Regulations, and Laws.

The County and the IDA shall abide by, and comply with, all Local, State and Federal laws, statutes, rules, regulations, orders, and policies by which that party is legally bound and governed.

ARTICLE 20. Relationship of the County and the IDA.

This Agreement shall not be deemed or construed to create any agency relationship, partnership (limited or otherwise), association or joint venture between the County and the IDA.

ARTICLE 21. No Conflict of Interest.

The IDA represents and warrants to the County that the IDA has not employed or retained any elected official, officer or employee of the County in order to secure this Agreement. Moreover, the IDA represents and warrants to the County that the IDA has not paid, or offered to pay or agreed to pay any person any fee, commission, percentage, brokerage fee, incentive fee or gift of any kind contingent upon or in connection with securing and executing this Agreement.

ARTICLE 22. Use of the County Logo and Publicity.

a. Pursuant to, and consistent with, County Ordinance 92-2 and County Administrative Policy 101.3, the IDA may not manufacture, use, display or otherwise use any facsimile or reproduction of the County Seal/Logo without the express written approval of the BCC.

b. Use of any County trademarks, service marks and/or trade names by the IDA in any marketing, promotional, sponsorship or advertising materials and/or activities shall be subject to pre-approval by the County.

ARTICLE 23. Governing Law and Venue.

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

ARTICLE 24. Independent Contractor.

The County shall be, and shall act as, an independent contractor of the IDA, and the employees of the County shall not be considered to be employees of the IDA.

ARTICLE 25. No Third Party Beneficiaries.

Both the County and the IDA expressly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

ARTICLE 26. Effect of Failure to Insist on Strict Compliance with Conditions.

The failure of the either party to insist upon strict performance of any term, condition, provision and/or requirement of this Agreement shall not be construed as a waiver of such term, condition, provision and/or requirement on any subsequent occasion.

ARTICLE 27. Severability.

If any word, phrase, sentence, part, Article, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.

ARTICLE 28. Waiver.

The failure of either the County or the IDA to object or to take affirmative action with respect to any conduct of the party that is in breach or violation of the terms, conditions, provisions, or obligations of this Agreement, shall not be construed as a waiver of the violation or breach, or waiver of any future violation, breach, wrongful conduct, or omission.

ARTICLE 29. Survival.

Any term, condition, covenant, or obligation, which requires performance by a party subsequent to expiration or termination of this Agreement, shall remain enforceable against such party subsequent to such expiration or termination.

ARTICLE 30. Headings.

All Articles and descriptive headings of Articles noted in this Agreement are inserted for the convenience of the parties only, and shall not affect or control the interpretation of this Agreement.

ARTICLE 31. Authority to Execute.

Each of the parties hereto covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

ARTICLE 32. Execution in Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement on the date and year below written.

St. Johns County, Florida
by and through its Board of
County Commissioners

By: _____
Chair

Date: _____

Legal Review:

Senior Assistant County Attorney

ATTEST: Brandon J. Patty, Clerk of
the Circuit Court & Comptroller

By: _____
Deputy Clerk

St. Johns County Industrial Development
Authority

By: _____
Chair

Date: _____

Legal Review:

IDA Counsel

ATTEST:

By: _____
Secretary

ATTACHMENT A
SCOPE OF SERVICES

Phased Economic Development Branding Scope of Work

St. Johns County will develop a Countywide economic development brand, as well as corresponding sub-brands, to improve regional and national recognition of St. Johns County among target audiences. A strong and consistent brand will allow St. Johns County to effectively compete for economic development opportunities with top tier markets across the country.

The County will secure the services of a consultant to assist with brand development as appropriate and the effort will include opportunity for collaboration with County partners and stakeholders.

To develop the brand and complete an initial brand roll out, the Industrial Development Authority (IDA) will provide the County with up to \$250,000 in funding. The project will be divided into three phases. IDA will approve funding for each subsequent phase as the prior phase is satisfactorily completed. The funds will be expended as detailed below. Any unspent funds in phase 1 or phase 2 may be applied to the phase 3 brand promotion effort with IDA approval.

PHASE 1 TASKS	DESCRIPTIONS	COSTS
Market Research and Strategic Planning	Stakeholder meetings and review of recent market research, development of a local/regional SWOT analysis, creation of a plan to leverage identified strengths and further develop the opportunities, including St. Johns County's key economic development target industries	up to \$30,000
Brand Standard Development	Development of a primary logo and supporting sub-logos as well as a style guide that outlines the color schemes, fonts and other components to be utilized in all County economic development materials	up to \$20,000
PHASE 2 TASKS	DESCRIPTIONS	COSTS
Content Development	Creation of photography, video and copy writing, which will be utilized in the promotional materials for economic development	up to \$40,000
Website Development	Purchase of a url and development of a website using the new brand standards and content	up to \$55,000
Collateral Material Development	Electronic and tangible promotional items, which will use the new brand standards and content	up to \$25,000
Trademark of Logos	Fees and costs associated with trademarking logos	up to \$5,000
PHASE 3 TASKS	DESCRIPTIONS	COSTS
Brand Promotion	Digital and print promotions supporting the initial roll out of the new economic development brand	at least \$75,000
Total Project Cost		\$250,000