

**AGREEMENT BETWEEN BROWARD COUNTY AND AQUA MARKETING AND  
COMMUNICATIONS, INC., FOR ADVERTISING SERVICES  
(RFP #GEN2116476P1)**

This Agreement (“Agreement”) is made and entered between Broward County, a political subdivision of the State of Florida (“County”), and Aqua Marketing & Communications, Inc., a Florida corporation, authorized to transact business in the State of Florida (“Contractor”) (County and Contractor collectively referred to as the “Parties”).

**RECITALS**

A. County competitively advertised for certain advertising services pursuant to Request for Proposals No. GEN2116476P1 (“RFP”).

B. Contractor responded to the RFP, was deemed responsible and responsive, and was ranked first by the evaluation committee. This Agreement reflects the subsequent negotiations between the Parties.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 **Airport** means the Fort Lauderdale-Hollywood International Airport, Broward County, Florida.

1.2 **Annual Marketing Communications Plan** means the marketing plan developed by the GFLCVB and Contractor identifying the GFLCVB’s yearly marketing goals.

1.3 **Aviation Department** or **Aviation** means the Broward County Aviation Department, or any successor agency.

1.4 **Hourly Rate** means Contractor’s hourly rate for Optional Services specified in Exhibit B (which hourly rate is also utilized for determining the Flat Fee Differential).

1.5 **Board** means the Board of County Commissioners of Broward County, Florida.

1.6 **Commissioned Media Services** means all Services associated with purchases of advertising from third parties made by Contractor on behalf of County during a Fiscal Year where the purchased advertising is in excess of: (a) Four Million Dollars (\$4,000,000.00) cumulatively during that Fiscal Year of the Initial Term; and (b) Four Million Five Hundred Thousand Dollars (\$4,500,000.00) during that Fiscal Year of an Extension Term.

1.7 **Contract Administrator(s)** means the following persons or such other person as designated in writing by the person identified below: for services performed on behalf of the GFLCVB, the President of the GFLCVB (“GFLCVB Contract Administrator”); for services

performed for the Aviation Department, the Aviation Department Director (“Aviation Contract Administrator”); for services performed for Port Everglades, the Port Everglades Director (“Port Contract Administrator”); for services performed for the Parks and Recreation Division, the Parks and Recreation Division Director (“Parks Contract Administrator”). Each of the GFLCVB Contract Administrator, Aviation Contract Administrator, Port Contract Administrator, and Parks Contract Administrator will be the “Contract Administrator” for the applicable services.

1.8 **County Administrator** means the administrative head of County appointed by the Board.

1.9 **County Attorney** means the chief legal counsel for County appointed by the Board.

1.10 **County Business Enterprise** or **CBE** means a small business certified as meeting the requirements of Section 1-81, Broward County Code of Ordinances.

1.11 **Division(s)** means the GFLCVB, Aviation Department, Port Everglades, Parks and Recreation Division, and any other County department or division added to this Agreement in accordance with the Scope of Services.

1.12 **Fiscal Year** means County’s fiscal year (October 1 through the following September 30), except for Fiscal Year 1, which is from April 1, 2020, through September 30, 2020.

1.13 **Flat Fee Differential** means for any calendar quarter (i.e., January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31) the difference between: (a) the Flat Fee Services payment described in Exhibit B, and the total of (b)(i) the product of the hours actually incurred on Flat Fee Services multiplied by the Hourly Rate during the calendar quarter, plus (ii) the expenses incurred by Contractor and included in the Flat Fee Services payment.

1.14 **Flat Fee Services** means all Services described in Exhibit A (inclusive of expenses specified therein) other than Optional Services and Commissioned Media Services.

1.15 **GFLCVB** means the Greater Fort Lauderdale Convention & Visitors Bureau, or any successor agency.

1.16 **Notice to Proceed** means a written authorization issued by the applicable Contract Administrator directing Contractor to proceed with the project, phase, or task, contained in a fully executed Work Authorization.

1.17 **Optional Services** means Services ordered by the GFLCVB, the Aviation Department, Parks and Recreation Division, or Port Everglades via a Work Authorization.

1.18 **Parks and Recreation Division** or **Parks** means the Broward County Parks and Recreation Division, or any successor agency.

1.19 **Port Everglades** or **Port** means the Broward County Port Everglades Department, or

any successor agency.

1.20 **Services** means the Flat Fee Services, Optional Services, and Commissioned Media Services as described in this Agreement or any Work Authorization(s).

1.21 **Subcontractor** means an entity or individual providing Services to County through Contractor. The term "Subcontractor" shall include all subconsultants.

1.22 **Work Authorization** means a written order in the form attached as Exhibit D executed by County and Contractor, directing Contractor to perform work and detailing the terms of payment and the scope of work.

## ARTICLE 2. SCOPE OF SERVICES

2.1 Services. Contractor will perform all work identified in this Agreement including, without limitation, the work specified in Exhibit A (the "Scope of Services") and in any executed Work Authorization. The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable. Contractor acknowledges and understands that the relationship between County and Contractor is nonexclusive in nature and County may obtain services similar or identical to the Services from other individuals and entities.

2.1.1 Flat Fee Services. Contractor shall perform all Flat Fee Services as described in Exhibit A for the flat fee compensation, paid in arrears on a monthly basis, as described in Exhibit B.

2.1.2 Commissioned Media Services. Contractor shall perform any and all Commissioned Media Services identified in Exhibit A as may be requested from time to time by the GFLCVB Contract Administrator pursuant to signed Work Authorizations after receipt of a Notice to Proceed from the applicable Contract Administrator. Contractor may charge the commissions as specified in Exhibit B for all Commissioned Media Services.

2.1.3 Optional Services. Contractor shall perform any and all Optional Services as may be requested from time to time by the applicable Contract Administrator for GFLCVB, the Parks and Recreation Division, Port Everglades, or Aviation Department pursuant to a signed Work Authorization after receipt of a Notice to Proceed from the applicable Contract Administrator, billing at the Hourly Rate. Optional Services for GFLCVB are limited to those described in Section 7 of Exhibit A and the exhibits incorporated therein.

2.2 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of

this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement. The Contract Administrator may approve in writing minor modifications or amendments to the Scope of Services or any Work Authorization provided that such modifications do not waive any right of County or increase: (a) the monthly Flat Fee Services payment amount; (b) any of the specified not-to-exceed amounts stated in Section 5.2; or (c) the Hourly Rate. Contractor shall perform all Services in full cooperation with and under the direct supervision of the applicable Contract Administrator(s). Any approvals required by a Contract Administrator must be in writing.

2.3 Work Authorizations. In addition to all other requirements for Work Authorizations in this Agreement, Work Authorizations, all of which must contain a maximum not-to-exceed amount or a lump sum amount, may be authorized as follows: (a) the applicable Contract Administrator may execute Work Authorizations for media buys, in any amount up to the maximum not-to-exceed amounts described in Section 5.2; (b) the applicable Contract Administrator may execute Work Authorizations for Services (other than media buys) for which the cost to County per Work Authorization is less than \$100,000.00; (c) the Director of Purchasing may execute Work Authorizations for which the cost to County is within the Director of Purchasing's delegated authority; and (d) Work Authorizations that are above the Purchasing Director's delegated authority require express approval by the Board. Contractor shall not commence work under a Work Authorization until both Parties have executed the Work Authorization and County has issued a written purchase order and Notice to Proceed. Amendments to a Work Authorization that increase the amount to be paid by County or the unit price for the goods or services to be performed by Contractor or any Subcontractor must be authorized and executed in the same manner as a new Work Authorization (e.g., Contract Administrator as described in (a) and (b) above, Director of Purchasing as described in (c) above, and Board as described in (d) above). All other Work Authorizations may be authorized and executed by the applicable Contract Administrator. At any time prior to performance of the applicable task or component by Contractor, the Contract Administrator may terminate any task or component of any Work Authorization. In such event, Contractor will be eligible to receive payment only for any actual hours expended on the task in accordance with the Work Authorization prior to termination by the Contract Administrator, as well as the portion of any production expenses authorized in the Work Authorization that were actually incurred prior to the termination date and the actual costs of any non-cancelable media placements.

2.4 Contractor Responsibility. Contractor represents that all Services will be performed by Contractor (unless otherwise approved by Contract Administrator) and, notwithstanding any permitted subcontracting, all Services are always the sole responsibility of Contractor. Contractor represents that it has or will secure, at its own expense, all personnel required to perform the Services.

2.5 Publicity; Press. Contractor will not make any statements, press releases, or publicity releases concerning this Agreement or the subject matter of this Agreement, or publish or otherwise disclose or permit to be disclosed or published any of the dates or other information obtained or furnished in connection with performing the Services, or any particulars thereof, at any time during the Term without the prior written approval of the GFLCVB Contract Administrator, which approval shall not unreasonably withheld.

2.6 Conflict Clients. Contractor will not perform any professional services during the Term for any other client that promotes tourism to warm weather destinations if, in the opinion of the GFLCVB Contract Administrator, the provision of such services would constitute a conflict of interest with regard to the Services to be performed hereunder. The GFLCVB Contract Administrator may at any time during the Term review a list of Contractor's then-existing client accounts to determine whether, in the GFLCVB Contract Administrator's sole opinion, any conflict of interest exists. Contractor will provide such list within twenty (20) days after any written request of the GFLCVB Contract Administrator. Contractor will further advise the GFLCVB Contract Administrator of all potential new clients so that the GFLCVB Contract Administrator can determine whether a conflict of interest exists under this section.

2.7 Subcontracting. Contractor may enter into contracts with Subcontractors to provide Services, provided Contractor obtains prior written approval of the GFLCVB Contract Administrator. County shall not be required to pay for Services performed by a Subcontractor unless such subcontracting was approved pursuant to this section. Under no circumstances may Contractor utilize the services of a Subcontractor to perform any activity outside the Scope of Services or for items or services requested by a Division that are required to be procured competitively under County's Procurement Code without the prior written approval of the County's Purchasing Director or designee. Contractor shall ensure that the agreement or contract with any approved Subcontractor require the Subcontractor to comply with the applicable provisions of this Agreement.

2.8 Materials. All sketches, drawings, details, and other documents, plans, work papers, and creative materials prepared or provided by Contractor in connection with the Services, other than materials constituting trade secrets under applicable law, shall become the property of County and shall be delivered to the applicable Division, without restriction or limitation as to use, promptly upon expiration, termination, or cancellation of this Agreement. If any Division uses the materials for a purpose other than in connection with the purposes for which they were originally provided, such Division shall remove the name plate or any other features that would identify Contractor.

### **ARTICLE 3. TERM AND TIME OF PERFORMANCE**

3.1 Term. The term of this Agreement shall begin on April 1, 2020 ("Effective Date"), and shall terminate on September 30, 2022 ("Initial Term"). The Initial Term together with any extensions permitted under this Agreement shall be referred to as the "Term."

3.2 Extensions. County shall have the option to renew this Agreement for up to two (2) additional one (1) year terms (each an "Extension Term") upon written notice of renewal by the County's Purchasing Director to Contractor at least thirty (30) days prior to the expiration of the then-current term.

3.3 Additional Extension. In the event unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of an Extension Term not practicable, or if no extension is available and expiration of this Agreement would, as determined by the Purchasing Director, result in a gap in the provision of services necessary for the ongoing operations of County, then the Purchasing Director may extend this Agreement on the same terms and conditions for period(s) not to exceed six (6) months in the aggregate, provided that any such extension is within the authority of the Purchasing Director or otherwise authorized by the Board. The Purchasing Director may exercise this option by written notice stating the duration of the extended period, which notice shall be provided to Contractor at least thirty (30) days prior to the end of the then-current term.

3.4 Extension Rates and Terms. For any extension beyond the Initial Term, Contractor shall be compensated at the rates in effect when the extension was invoked by County, unless otherwise expressly stated. Contractor shall continue to provide the Services upon the same terms and conditions as set forth in this Agreement for such extended period.

3.5 Fiscal Year. The continuation of this Agreement beyond the end of any Fiscal Year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

3.6 Time of the Essence. Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of Contractor required by this Agreement shall be completed no later than the deadlines established by the applicable Contract Administrator. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

#### **ARTICLE 4. LETTER OF CREDIT**

Simultaneously with the execution of this Agreement, Contractor shall secure at its sole expense and provide the GFLCVB Contract Administrator with an irrevocable letter of credit, in a form acceptable to the GFLCVB Contract Administrator, that guarantees Contractor's performance of all financial obligations set forth in this Agreement, in the total amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00). Contractor is required to maintain such letter of credit throughout the entire Term. Upon written notice to Contractor specifying the event of default and providing a fifteen (15) day cure period, any Contract Administrator may, in his or her sole discretion, draw on the letter of credit if Contractor has failed to cure the default within the cure period.

**ARTICLE 5. COMPENSATION**

5.1 Payment Schedule. County agrees to pay Contractor, as compensation for performance of all Services actually performed pursuant to this Agreement, in accordance with the Payment Schedule set forth in Exhibit B.

5.2 Maximum Compensation. For all goods and services provided under this Agreement, County will pay Contractor up to a maximum amount as follows:

<b>Services/Goods</b>	<b>Term</b>	<b>Not-to-Exceed Amount</b>
Flat Fee Services (including both Contractor time and expenses included in the definition of Flat Fee Services)	Fiscal Year 1 (April 1, 2020 through September 30, 2020)	\$743,496
	Fiscal Years 2 through 5	\$1,234,200 per Fiscal Year
	<b>Initial Term</b>	\$3,211,896
	<b>Term of Agreement</b>	<b>\$5,680,296</b>
Optional Services for Parks (inclusive of Reimbursable Expenses and media buys)	Annually per Fiscal Year	\$50,000
	<b>Term of Agreement</b>	<b>\$250,000</b>
Optional Services for Aviation (inclusive of Reimbursable Expenses and media buys)	Annually per Fiscal Year	\$1,500,000
	<b>Term of Agreement</b>	<b>\$7,500,000</b>
Optional Services for Port (inclusive of Reimbursable Expenses and media buys)	Annually per Fiscal Year	\$850,000
	<b>Term of Agreement</b>	<b>\$4,250,000</b>
Initial Branding Services (Optional Services for GFLCVB)	Initial Term	\$281,790
Adverse Impact Services (Optional Services for GFLCVB)	Term of Agreement	<b>\$150,000</b>
Website Design Services (Optional Services for GFLCVB)	Annually per Fiscal Year	\$75,330
	<b>Term of Agreement</b>	<b>\$150,000</b>
Social Media Services (Optional Services for GFLCVB)	Annually per Fiscal Year	\$50,000
	<b>Term of Agreement</b>	<b>\$250,000</b>
Public Relations Services (Optional Services for GFLCVB)	Annually per Fiscal Year	\$180,000
	<b>Term of Agreement</b>	<b>\$900,000</b>
Reimbursable Expenses for Optional Services for GFLCVB (e.g., Public Relations Services, Social Media Services, Website Design Services, Adverse Impact Services, and Initial Branding Services)	Annually per Fiscal Year	The greater of 10% of total media buy for the Fiscal Year or \$750,000
	<b>Term of Agreement</b>	<b>The greater of 10% of the total media buy for the Term or \$3,750,000</b>
Media Buys for CVB	<b>Term of Agreement</b>	<b>\$30,000,000</b>
<b>TOTAL NOT-TO-EXCEED AMOUNT (for all Services and media buys)</b>	<b>Term of Agreement</b>	<b>\$53,162,086</b>

Payment shall be made only for Services actually performed and completed pursuant to this Agreement, which amount shall be accepted by Contractor as full compensation for all such

Services. Contractor acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County's obligation to compensate Contractor for work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Contractor's obligation to perform all Services. Unless and except to the extent expressly authorized in this Agreement, Contractor shall not be reimbursed for any expenses it incurs under this Agreement.

5.3 Method of Billing. Contractor must submit individual monthly invoices in arrears for Services to each Division.

5.3.1. Monthly invoices for Flat Fee Services and Optional Services shall designate the Services performed and costs incurred (all of which are included within the monthly Flat Fee Services payment) and shall contain the actual total hours worked by each of Contractor's employees on each specific Service performed during the applicable period, calculated in ten (10) minute increments, with a description of the tasks accomplished and any other information deemed necessary by the applicable Contract Administrator(s) to support and verify the detailed time entries.

5.3.2. Contractor shall not be entitled to additional amounts for Flat Fee Services above the monthly Flat Fee Services payment regardless of the number of hours actually worked during that calendar month. County and Contractor agree that Contractor shall not be obligated to expend hours for Flat Fee Services in a monthly period that are more than one hundred twenty percent (120%) of the Monthly Flat Fee Services payment divided by the blended hourly rate. (For example purposes only, if the Monthly Flat Fee Services payment during Fiscal Year 2 of the Term is \$102,850, the cap on time incurred for Flat Fee Services in a month would be 796.25 hours:  $\$102,850 \times 120\%$  divided by  $\$155$ .)

5.3.3. Invoices for Commissioned Media Services shall designate the Services provided and shall contain detailed information regarding the media buy, the date(s) and time(s) the advertising was published (when applicable), and any other information deemed necessary by the Contract Administrator.

5.3.4. An original invoice plus one copy are due within fifteen (15) calendar days after the end of the month, except that the final invoice must be received no later than sixty days after expiration or earlier termination of this Agreement. All invoices to County from Contractor reflecting Subcontractor fees must include documentation in the form of invoices or receipts from the Subcontractor describing the nature of the Services provided and, if such Services were procured via a Work Authorization, the applicable Work Authorization number or title. Contractor shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit F). The certification must be accompanied by a copy of the notification sent to each Subcontractor and supplier listed in item 2 of the form, explaining the good cause why payment has not been made. Contractor's invoices must also include the following information or documentation:



- a) Reference to any applicable Work Authorization
- b) Phone call log/net/time/date
- c) Travel Authorization Forms
- d) Total invoiced amount
- e) Total amount billed to date
- f) Total amount paid for to date
- g) Total amount outstanding to date

5.4. Unused Flat Fee Credit. The Flat Fee Differential, if any, in any calendar quarter will be credited against the amounts otherwise invoiced for Optional Services provided during that calendar quarter and the following calendar quarter by GFLCVB, Port, Aviation, Parks, and other County agencies utilizing Services under this Agreement that otherwise constitute eligible uses for Tourist Development Tax (“TDT”) funds as set forth in Section 125.0104(5), Florida Statutes. The Flat Fee Differential shall be credited each month first against amounts due for Optional Services and media buys by the GFLCVB, and then, on a pro rata basis based upon the Services provided to each Division in the applicable month, against amounts due for Services (other than Flat Fee Services) and media buys. Any application of the Flat Fee Differential shall not be included for calculating the not-to-exceed amounts for Optional Services stated in Section 5.2.

5.5. Method of Payment

5.5.1. County Payments. County shall pay Contractor within thirty (30) days of receipt of Contractor’s proper invoice, as required by the “Broward County Prompt Payment Ordinance” Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the applicable Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement. Payment shall be made to Contractor at the address designated in the Notices section.

5.5.2. Subcontractor Payments. Contractor shall pay its CBE Subcontractors and suppliers within fifteen (15) calendar days following receipt of payment from County for such subcontracted work, and pay all other Subcontractors and suppliers within thirty (30) days following receipt of payment from County for such subcontracted work or supplies. If Contractor withholds an amount from CBE Subcontractors or suppliers as retainage, such retainage shall be released and paid within fifteen (15) days following receipt of payment of retained amounts from County. For all other Subcontractors or suppliers, if Contractor withholds an amount as retainage, such retainage shall be released and paid within thirty (30) calendar days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless Contractor demonstrates that such failure to pay results from a bona fide dispute with the

Subcontractor or supplier and, further, Contractor promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Contractor shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.6. Competitive Procurement by Contractor for Goods and Services. Whether included in the monthly Flat Fee Services payment or as part of any reimbursable expense, Contractor shall obtain three (3) competing bids from unaffiliated and qualified third-party vendors for any services to be performed by a Subcontractor or outside vendor where the costs are estimated to be more than One Thousand Dollars (\$1,000.00), and shall, except as provided in this section, select the lowest bid from the bidding vendors. If Contractor believes that a vendor other than the least low bid vendor should be selected to perform the work, Contractor shall provide written details to the applicable Contract Administrator regarding the selection process, the bids received from each vendor, and Contractor's justification for the request to select a vendor other than the low bid, and shall thereafter follow the instructions of the applicable Contract Administrator of which vendor to select.

5.7. Reimbursable Expenses. Any expenses for which Contractor seeks reimbursement must be preapproved in writing by the applicable Contract Administrator and, in the case of reimbursement expenses for Optional Services, must be included in the applicable Work Authorization. Approved reimbursable expenses may never exceed the actual cost incurred and actually paid by Contractor for such items or services. For reimbursement of any travel costs or travel-related expenses permitted under this Agreement, Contractor must comply with and not exceed the limitations of Section 112.061, Florida Statutes. Other than mileage reimbursement for approved travel outside of Broward, Miami-Dade, and Palm Beach County, prior to County being obligated to remit to Contractor any sums for reimbursable expenses, Contractor must provide copies of actual paid invoices for such expenses or other evidence satisfactory to the applicable Contract Administrator that such amounts were incurred and actually paid by Contractor. Any entertainment expenses for which Contractor seeks reimbursement must comply with the provisions of Section 125.0104, Florida Statutes, with submissions for reimbursement to include documentation evidencing the purpose and the names of all individuals involved in the activity or event. County shall not be liable for any such expenses other than those that strictly comply with this section.

5.8. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the applicable Contract Administrator or failure to comply with this Agreement. Any amounts withheld shall not be subject to payment of interest by County.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES**

6.1 Representation of Authority. Contractor represents and warrants that this Agreement

constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Contractor has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Contractor. Contractor further represents and warrants that execution of this Agreement is within Contractor's legal powers, and each individual executing this Agreement on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

6.2 Solicitation Representations. Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Agreement, unless otherwise expressly disclosed in writing by Contractor.

6.3 Contingency Fee. Contractor represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4 Truth-In-Negotiation Representation. Contractor's compensation under this Agreement is based upon its representations to County, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

6.5 Public Entity Crime Act. Contractor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Contractor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

6.6 Discriminatory Contractor and Scrutinized Companies Lists. Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Contractor further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

6.7 Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services, and that each person and entity that will provide Services is duly qualified to perform

such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Contractor represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

6.8 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Contractor certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

6.9 Breach of Representations. In entering into this Agreement, Contractor acknowledges that County is materially relying on the representations and warranties of Contractor stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Contractor, to deduct from the compensation due Contractor under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Contractor under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

## **ARTICLE 7. INDEMNIFICATION**

Contractor shall indemnify, hold harmless, and defend County and all of County's former, current, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

## ARTICLE 8. INSURANCE

8.1 For the duration of the Agreement, Contractor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.2 Contractor shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article.

8.3 On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, Contractor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Contractor shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.4 Contractor shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Contractor has been completed, as determined by Contract Administrator. Contractor or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Contractor shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

8.5 Contractor shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

8.6 If Contractor maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, County shall be entitled to any such broader coverage and higher limits maintained by Contractor. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Contractor.

8.7 Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior

to the Effective Date or commencement of Services. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Contractor agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor agrees to obtain same in endorsements to the required policies.

8.8 Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor's insurer may acquire against County, and agrees to obtain same in an endorsement of Contractor's insurance policies.

8.9 Contractor shall require that each Subcontractor maintain insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractor comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractor's applicable insurance policies.

8.10 In the event Contractor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. Contractor shall not permit any Subcontractor to provide Services unless and until the requirements of this article are satisfied. If requested by County, Contractor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

8.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Contractor must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

## **ARTICLE 9. TERMINATION**

9.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a

termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

9.2 This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.2.1 Contractor's failure to suitably perform the Services, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

9.2.2 If Contractor is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if Contractor is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes;

9.2.3 By the Contract Administrator or the Director of Office of Economic and Small Business Development ("OESBD") for any fraud, misrepresentation, or material misstatement by Contractor in the award or performance of this Agreement or that otherwise violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

9.2.4 By the Director of OESBD upon the disqualification of Contractor as a CBE if Contractor's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Contractor, or upon the disqualification of one or more of Contractor's CBE participants by County's Director of OESBD if any such participant's status as a CBE firm was a factor in the award of this Agreement and such status was misrepresented by Contractor during the procurement or the performance of this Agreement.

9.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. In the event this Agreement is terminated for convenience by County, Contractor shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Contractor acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Contractor, for County's right to terminate this Agreement for convenience.

9.5 In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

## **ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2 Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Contractor to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

10.3 Contractor will meet the required CBE goal by utilizing the CBE firms listed in Exhibit E (or a CBE firm substituted for a listed firm, if permitted) for six percent (6%) of total Services (excluding media buys) (the "Commitment").

10.4 In performing the Services, Contractor shall utilize the CBE firms listed in Exhibit E for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by County, Contractor shall enter into formal contracts with the CBE firms listed in Exhibit E and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

10.5 Each CBE firm utilized by Contractor to meet the CBE goal must be certified by OESBD. Contractor shall inform County immediately when a CBE firm is not able to perform or if Contractor believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Contractor to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Contractor shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event, Contractor shall notify County, and OESBD may adjust the CBE goal by written notice to Contractor. Contractor shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

10.6 The Parties stipulate that if Contractor fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and County determines, in the sole discretion of the



OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

10.7 Contractor acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify County in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

10.8 County may modify the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

10.9 Contractor shall provide written monthly reports to the Contract Administrator attesting to Contractor's compliance with the CBE goal stated in this article. In addition, Contractor shall allow County to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining Contractor's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

10.10 The Contract Administrator may increase allowable retainage or withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Contractor's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

## ARTICLE 11. MISCELLANEOUS

11.1 Rights in Documents and Work. Subject to Section 2.12, any and all reports, photographs, surveys, and documents created by Contractor in connection with performing Services shall be owned by County and shall be deemed works for hire by Contractor and its agents; in the event the Services are determined not to be a work for hire, Contractor hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of County and shall be delivered by Contractor to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Contractor may be withheld until all documents are received as provided in this Agreement. Contractor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.2 Public Records. To the extent Contractor is acting on behalf of the County as stated in Section 119.0701, Florida Statutes, Contractor shall:

- a) Keep and maintain public records required by County to perform the Services;
- b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- d) Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Contractor or keep and maintain public records required by County to perform the services. In Contractor transfers the records to County, Contractor shall destroy and duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains public records, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Contractor will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Contractor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Contractor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Contractor as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Contractor. Contractor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 767-2450, SJONES@BROWARD.ORG, 101 NE THIRD AVE., SUITE 100, FORT LAUDERDALE, FLORIDA 33301.**

11.3 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Contractor and its Subcontractors that are related to this Agreement including, without limitation, time and billing records that support the actual hours worked as reflected on invoices issued to County by Contractor. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or its Subcontractors shall make same available in written form at no cost to County.

Contractor and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Contractor hereby grants County the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for

County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Contractor in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Contractor in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Contractor.

Contractor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.4 Independent Contractor. Contractor is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties or between County and any employee of Contractor or any Subcontractor. In providing Services, neither Contractor nor its agents shall act as officers, employees, or agents of County. Contractor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

11.5 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

11.6 Third-Party Beneficiaries. Neither Contractor nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.7 Notices. For a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

For County:  
Stacy Ritter, President – GFLCVB  
101 NE 3<sup>rd</sup> Avenue, Suite 100  
Fort Lauderdale, FL 33301  
E-mail: [sritter@broward.org](mailto:sritter@broward.org)

For Contractor:  
Dave Di Maggio, President  
Aqua Marketing & Communications, Inc.  
360 Central Avenue – Suite 420  
St. Petersburg, FL 33701  
E-mail: [daved@welcometoaqua.com](mailto:daved@welcometoaqua.com)

11.8 Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for subcontracting approved by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. Any assignment, transfer, or encumbrance in violation of this section will be null and ineffective. If Contractor violates this provision, in addition to any other rights and remedies County may have at law or in equity, County may immediately terminate this Agreement.

11.9 Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

11.10 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

11.11 Compliance with Laws. Contractor and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations. Contractor shall ensure that all Services are compliant with the American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations, and that any web, software, or other electronic content produced or provided as part of the Services which are to be accessed by members of the public meets or exceeds the World Wide Web Consortium/Web Content Accessibility Guidelines (WCAG)

2.0 Level AA standard or any higher standard as may be adopted by the International Organization for Standardization. Upon request by a Contract Administrator, Contractor will provide all accessibility testing results and written documentation verifying accessibility, as well as promptly respond to and resolve accessibility complaints.

11.12 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.13 Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

11.14 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

11.15 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect.

11.16 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, VENDOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

11.17 Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Contractor.

11.18 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

11.19 Payable Interest

11.20.1 Payment of Interest. County shall not be liable to pay any interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.20.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.20 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.21 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and 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.

11.22 Use of County Logo. Contractor shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

11.23 Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Contractor certifies that it has a drug-free workplace program that it will maintain such drug-free workplace program for the duration of this Agreement.

11.24 Living Wage Requirement. If Contractor is a "covered employer" within the meaning of

the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Contractor agrees to and shall pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as required by such ordinance, and Contractor shall fully comply with the requirements of such ordinance. Contractor shall ensure all of its Subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2020, and CONTRACTOR, signing by and through its President, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners


\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 2020

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By  2/25/2020  
Nathaniel A. Klitsberg (Date)  
Senior Assistant County Attorney

By  2/25/2020  
René D. Harrod (Date)  
Deputy County Attorney

NAK/RH  
2020-02-07 Aqua Marketing Advertising Contract (CLEAN)  
02/07/2020  
#493568v4

**AGREEMENT BETWEEN BROWARD COUNTY AND  
AQUA MARKETING AND COMMUNICATIONS, INC., FOR ADVERTISING SERVICES  
(RFP #GEN2116476P1)**

WITNESSES:

Aqua Marketing & Communications, Inc.

Thom Hart  
Signature

By: David M. DiMaggio  
David M. DiMaggio, President

Thom Hart  
Print Name of Witness above

14<sup>th</sup> day of February, 2020

Brittany Chapman  
Signature

Brittany Chapman  
Print Name of Witness above

ATTEST:  
Joanne Bisset  
Corporate Secretary or other person authorized  
to attest



(CORPORATE SEAL OR NOTARY)

## EXHIBIT A – SCOPE OF SERVICES

### 1. Project Overview

Contractor shall provide creative brand development services, production services, media planning, including buying and designing strategic marketing campaigns, for the Greater Fort Lauderdale Convention & Visitors Bureau (GFLCVB), as well as project-specific work for the Aviation Department (Airport), Port Everglades Department (Port), and Parks and Recreation (Parks) (operated under separate budgets). Project-specific work for the Port, Airport, and Parks will be separately determined and authorized as needed. Additional County departments or divisions may be added by County at any time upon written notice by the GFLCVB Contract Administrator, which notice shall specify the Contract Administrator and any applicable budget limitations for that department or division.

### 2. Services Description

Contractor shall provide Flat Fee Services (as described below) on a due course basis without the requirement of specific written authorization from County. The Flat Fee Services include all Services associated with media ad buys where the cumulative Fiscal Year cost of the purchased media is equal or less than Four Million Dollars (\$4,000,000) during any Fiscal Year in the Initial Term, or Four Million Five Hundred Thousand Dollars (\$4,500,000) during each Extension Term exercised by County).

In addition, Contractor shall provide Commissioned Media Services consisting of all Services associated with media ad buys where the cumulative Fiscal Year cost of purchased media is in excess of Four Million Dollars (\$4,000,000) during any Fiscal Year in the Initial Term, or Four Million Five Hundred Thousand Dollars (\$4,500,000) during each Extension Term exercised by County. Such Commissioned Media Services may only be undertaken after Contractor receives a fully executed Work Authorization, followed by a Notice to Proceed.

Contractor must provide Services that maximize revenue generation for Greater Fort Lauderdale's tourism industry, Airport, and Port.

### 3. Managerial Approach

Contractor will ensure that the persons responsible for Contractor's performance of the Services or identified below (collectively, "Key Personnel") are appropriately trained and experienced and have adequate time and resources to perform in accordance with the terms of this Agreement. To the extent Contractor seeks or is required to make any change to the composition of the Key Personnel, Contractor will provide County with thirty (30) days' advance written notice (or as much advance notice as is possible if thirty (30) days' notice is not possible) regarding such changes and the management plan associated with such changes, along with such information as necessary to the GFLCVB Contract Administrator to determine the suitability of proposed Key Personnel. County shall not be responsible for any additional

costs associated with a change in Key Personnel. **Contractor's Key Personnel at the commencement of the Agreement is Fran Vaccaro, Vice President – Account Services.**

#### **4. Communication & Reports**

Contractor shall provide such periodic reporting as may be requested by any Contract Administrator.

#### **5. Flat Fee Services**

Contractor shall provide the following Flat Fee Services:

##### **A. Brand Strategy and Creative Services:**

1. Development of a research-based brand and marketing and advertising creative strategy for both the domestic and international markets and provide recommendations for same.
2. Development and production of results-driven marketing and advertising creative to support overall media and brand strategy.
3. Design and graphics services, including the creation and implementation of original creative, designs, artwork, layout and design templates, typography and illustrations, photography and other related elements that present a consistent brand for print, TV, out-of-home (billboards), email, social media, apps and online advertising.
4. Editorial services including copywriting, fact-checking, proofreading and editing of all materials placed or handled by Contractor.
5. Production services necessary to create promotional materials from concept to final format, including those required for relevant media and added value placements and delivery to media vehicles as required.
6. Supervision of photography and video production (including overseeing the direction of photo and video shoots and creative asset selections).
7. Project management related to production work.
8. Development and production of the Annual Marketing Communications Plan in a manner and format approved by County.
9. Collateral projects including copy, design, production, studio services, Contractor selection and management (as required) and print production management

(including attending press checks when required). Collateral projects to include annual vacation guide, meetings guide, Superior Small Lodging directory, Visitors Map brochure, and others as needed.

10. Maintain digital vacation planner and meeting planner brochures, including making updates as necessary on multiple platforms for optimal user experience.
11. Implement a monthly email marketing program including the creation and deployment of newsletters for leisure and group sales audiences, with a goal of open rates and click through rates (i.e., the percentage of people visiting a web page who access a hypertext link in a particular advertisement) that meet or exceed industry standards.
12. Develop a content marketing strategy to deploy across a variety of platforms including digital content design, programming and production; this may also include mobile app design and development.

B. Account Maintenance:

1. Delivery of all media source files (including, but not limited to native and finished layered photoshop files) to County.
2. Assist in the management of all County digital assets, including photo library, video footage, reader response forms, etc.
3. Conduct weekly status calls/in-person meetings with GFLCVB internal marketing team and partner agencies (social, public relations, and global representation firms) regarding all active projects, and maintain highly responsive email and phone communications. These weekly status calls/in-person meetings are non-billable and included in the Flat Fee Services, and count as hours by Contractor against the maximum provided in Section 5.3.2, but do not apply towards the calculation of any Flat Fee Differential as defined in the Agreement.
4. Attend stakeholder meetings, such as the Tourist Development Council ("TDC") and the Marketing Advisory Committee ("MAC"), and others hospitality and industry meetings as needed. These stakeholder meetings are non-billable and included in the Flat Fee Services and count as hours by Contractor against the maximum provided in Section 5.3.2, but do not apply towards the calculation of any Flat Fee Differential as defined in the Agreement.
5. Compile monthly reports including analytics of the impact of executed media strategies and tactics, as well as provide recommendations for improvement for all Key Performance Indicators and generate custom reports and analytics, as needed.

6. Create, produce and participate in presentations to County boards and committees, partners or other groups as requested or needed.
7. Complete monthly billing with all appropriate back-up documents, including detailed time sheets, media proof of performance and detailed invoices (including pre-approved reimbursables), original line item receipts, and comprehensive billing recap including projections through end of the Fiscal Year.
8. Purchase unique specialty items for promotional purposes, subject to prior written approval of the GFLCVB Contract Administrator.
9. Special projects including design and production of support materials and tradeshow elements including displays, subject to prior written approval by the GFLCVB Contract Administrator.
10. Design and conduct quantitative and qualitative market research, survey and annual reports as requested.
11. Compile and submit award applications for top associations in marketing and tourism.

C. Media Planning

1. Develop and execute a comprehensive, strategic, research-based, integrated, and evolving mixed media annual media plan targeting key audiences and market segments in both domestic and international regions (in consultation with any global representation firms retained by the GFLCVB). Recommend appropriate media channels, including digital, email, print, TV, radio and out-of-home, and to adhere to specific goals established in conjunction with the GFLCVB.
2. Create and implement a comprehensive co-op media plan with broad-based participation (with hotels and other tourism attractions, e.g. print, digital, radio, vacation planner, etc.). Contractor will secure creative assets, ad sales and recruitment, billing and collection of partner contributions and reporting of leads.
3. Monthly digital reporting, return on investment insights with measurable results, and analysis of all advertising, including 1) Information regarding any increase in visitors to GFLCVB website and/or digital vacation planner; 2) Information regarding any increase in awareness and intent to visit Broward County (i.e. searches for flights and hotels, as well as bookings); 3) Monthly budget reviews, media verification, and invoicing; 4) Audit of all media buys for accuracy and

provide proof of performance, including tear sheets, photo sheets, screenshots and run reports, and ensure “make good accommodations” as necessary.

4. Optimize media buys on an ongoing basis to control the effectiveness of advertising and impact spend, evaluating new media opportunities, and determining efficient and effective media mix.
5. Negotiate across all media channels, obtaining competitive pricing, with a strong focus on leveraging strategic-added value.
6. If requested by County and subject to prior written approval as to each media buy, media buys cumulatively up to and including: (a) Four Million Dollars (\$4,000,000) each Fiscal Year during the Initial Term; and (b) Four Million Five Hundred Thousand Dollars (\$4,500,000) during each Extension Term. After securing all required approvals and before completing the media buy, Contractor will notify the Contract Administrator of the intended media buy to verify it conforms with what was originally approved and to secure a written Notice to Proceed. Contractor may not charge County for any expenses (other than the pass-thru costs of the media buy) associated with any media buy up to the amounts specified in (a) and (b) of this subsection above as all costs (other than the actual charges by the media outlet where the advertising will be run) are included in the Monthly Flat Fee.

## **6. Commissioned Media Services**

If requested by the applicable Contract Administrator(s) and subject to fully executed Work Authorizations and subsequent Notices to Proceed as to each media buy, Contractor may charge a commission on media buys cumulatively in excess of Four Million Dollars (\$4,000,000) for each Fiscal Year during the Initial Term, or in excess of Four Million Five Hundred Thousand Dollars (\$4,500,000) during each Extension Term exercised by County at the rates specified in Exhibit B. After securing all required approvals and before completing the media buy, Contractor will notify the Contract Administrator of the intended media buy to verify it conforms with what was originally approved and to secure a Notice to Proceed.

## **7. Optional Services**

Optional Services includes any other related services relating to the County’s advertising program (other than Flat Fee Services or Commissioned Media Services) deemed by County necessary (a) to the successful implementation of the GFLCVB advertising program to promote the destination or any aspect of the destination, or (b) for Aviation, Port, or Parks, including those listed below (subsections (A) through (E)).

All such additional services shall require execution of an appropriate Work Authorization setting forth the specific services to be provided, the cost, and the timing. Optional Services are

limited to the not-to-exceed amounts set forth in the Agreement, Section 5.2. Initial Branding Services and Adverse Impact Services include strategy and media-implementation plans (excluding costs of media buys).

- A. Initial Branding Services: See Exhibit A-1 for full details of the scope of these Optional Services.
- B. Adverse Impact Services: Services relating to a unique occurrence impacting the South Florida area that has a significant material adverse impact on tourism in Broward County (e.g. post-hurricane, regional public health crisis, etc.).
- C. Public Relations Services: See Exhibit A-2 for full scope of these Optional Services.
- D. Social Media Services: Services relating to the creation and posting of organic content and engaging with users on social media. Social Media Services are inclusive of developing and executing campaigns and daily organic content; providing twenty-four-hour monitoring of owned social media channels; and engaging with users quickly, accurately, and in the proper brand-voice. This Optional Service does not include paid social media advertisements, which are instead considered a media buy.
- E. Website Design Services: See Exhibit A-3 for full scope of these Optional Services.

*(The Remainder of this Page is Intentionally Blank.)*



## **Exhibit A-1 Initial Branding Services**

### **Summary of Initial Branding Services and Project Inclusions:**

Contractor shall implement a scope of service and sequence for its Initial Branding Services that ensures that County takes a unique position within the competitive set, that the County brand resonates with the potential traveler, and that the community adopts and embraces the devised brand. The entire process is documented, written, and oral reports are provided throughout the process. At the end of the process, the brand is clearly documented through written brand guidelines, including graphic standards and application.

Initial Branding Services shall include domestic focus group research (two U.S. markets) of initial intake/consumer mindset and four (4) international markets using similar methodology. Upon initial determination of the proposed branding, follow up focus groups will be performed in same markets to ascertain consumer/market resonance. Follow up will also include survey in origin markets to ascertain brand assets.

### **Step 1: Internal Audit**

The Internal Audit is the first phase of discovery. Through the internal audit Contractor gains an understanding of the internal opinion of County's current brand and the opportunities that may be obtained through re-branding. Activities during this step include:

- a. **Analysis of current brand and market position** – A review of any current brand, its expression, its historical development and use, its intended impact in the market, and a review of graphic expression and brand standards.
- b. **Destination attribute assessment** – A review of County's "reasons to visit" and "things to do." Besides experiencing the attributes first-hand, Contractor's staff listen to the GFLCVB staff or other stakeholders, as well as review what descriptions of the area and reasons to visit are being made by the hospitality and travel community.
- c. **Promotional history of destination** – A review of how County has historically gone to market, with emphasis on its visitation promise and distinctive visitation attributes.
- d. **History of partners' participation** – A review of how visitation partners (hotels, resorts, airports, travel trade, Visit Florida, etc.) have understood and attempted to help dissemination of County's brand. A determination will be made as to the partners' willingness to participate in future brand dissemination.
- e. **Review of online traffic and inquiry fulfillment** – Analysis of what people are seeking from County as an indicator of visitation wants and desires. Analysis will consider market

conditions, what is being offered through various media (online, visitor guides, advertising, etc.) and compared to the list of actual destination attributes.

f. **Review and analysis of social media voice** – Analysis of what people are saying about County through social media, as well as County’s history of audience engagement. In addition, a review of the potential competitive set is also engaged.

g. **Review and analysis of press and share of voice** – Analysis of what press has been achieved for County, through what sources and to what effect. In addition, a review of the potential competitive set is also engaged.

h. **Stakeholders input** – One-one-one interviews with key stakeholders conducted by Contractor. The interviews are designed to provide local insights into visitation, beliefs regarding visitor motivations, determine if stakeholders possess any research or visitor data able to be shared with the GFLCVB, and whether the stakeholder have been or would be willing to partner more closely with the GFLCVB or County in the future. Interviews are drawn from a cross section of the destination and typically may include market-leading properties, the local airport, political stakeholders, or others who may affect or be affected by area visitation. Additionally, Contractor strongly encourages the involvement of those who may evaluate branding efforts, as well as those who may be considered “adversaries” of the area’s tourism efforts or the GFLCVB.

Besides receiving insights from the key stakeholders, interviews are constructed to prepare stakeholders for accepting a final, market-driven outcome to the process (and not one based on politics or opinion). To that end, a process is constructed, and the conclusion of the process introduces agency conclusions to stakeholders prior to brand development and marketing testing.

i. **SWOT analysis** – As a result of stakeholder and other input above, the agency constructs a report of the destination’s observed Strengths, Weaknesses, Opportunities and Threats. The Stakeholders’ input into the SWOT analysis is conducted during the individual interviews, avoiding the influence of “Group Dynamics,” which may obscure important insights.

## **Step 2: External Audit**

a. **Past visitor target research** – Review and analysis of any past research executed to identify or understand County’s visitors, with special attention as to why visitors choose the destination, why they return, and what they tell others. Review of any previous research used to establish current brand or position.

b. **Competitive review and analysis** – Contractor provides an in-depth study of how competitive destinations are going to market to attract visitors, with special attention to

brand expression, visitation promises, messaging, graphic standards, attempted visitation position within the region, and competitors' visitation attributes (reasons to visit).

c. **Target history and visitation patterns** – Strongly aligned with when and why visitors choose a destination, a review of visitation history and patterns provides an understanding of the targets and their potential, future motivations. It also provides the basis for choosing candidates for further market research.

d. **Market research** – Primary research conducted to determine the potential visitors' knowledge of and response to the existing destination brand, and as importantly, those of the competitive set. This information provides important insight into what the most competitive brand definition and market position may be for County. Care will be taken to recruit respondents that have visited the destination as well as also have visited the competitive set. Research methodology involves focus groups as well as large sample, in-depth interviews.

*Note: Market research is typically conducted within markets of historic visitor origin. The number of markets chosen for research, and where those markets are geographically, greatly influence costs. Final costs for the overall project will be determined upon agreement between client and agency regarding which markets may be included in the research.*

### **Step 3: Strategic Brand Planning and Development**

a. **Analysis and assessment of all items from internal and external audits** – Includes Contractor's report to County and discussion with client and research partners regarding all findings.

b. **Initial brand and market positioning recommendations to client** – Includes a discussion of potential brand directions, reasons for their consideration and potential applications through all marketing communications channels, definition of Brand Personality. Through dialogue and considerations of the GFLCVB and other County staff, Contractor will prepare for finalizing potential directions for testing.

c. **Stakeholders conclusions review** – Prior to brand creation, conclusion of the study, including potential position and brand direction can be presented and discussed with a select group of key stakeholders.

d. **Preparation of potential brand directions for testing** – A variety of brand expressions and presentations are developed for marketing testing. Preparation will be dependent upon the determined research methodology. The GFLCVB Contract Administrator will review and approve all executions of directions prior to research.

#### **Step 4: Market Testing**

- a. **Research** – Utilizing the determined research methodology, the various potential brand directions will receive the review and reaction of potential visitors. Care will be taken to ensure that respondents have previously visited the destination as well as other competing destinations. Research methodology may involve both focus groups and large sample in-depth interviews.
- b. **Review and Analysis** – Involving Contractor and GFLCVB recommendations as well as research group discussion, a determination will be made as to what direction has the strongest potential vis-à-vis the competitive set.

*NOTE: Market research is typically conducted within markets of historic visitor origin. The number of markets chosen for research, and where those markets are geographically, greatly influence costs. Final costs for the overall project will be determined upon agreement between client and agency regarding which markets may be included in the research.*

#### **Step 5: Execution – Educate. Excite. Unite.**

- a. **Creation of pilot messages and Brand Standards Manual** – Upon completion of research and testing, Contractor will develop initial example messages for communications channels of County's choosing. Additionally, Contractor will create a Brand Standards Manual for use by all parties who will need to understand or communicate the brand.
- b. **Plan for external application and dissemination** – Working with the GFLCVB and other appropriate County representatives, Contractor will produce a plan for external application of and communication of the brand through others. Plans will suggest tactics for brand adoption through industry and travel partners (hotels, resorts, airports, etc.) as well as methods to turn visitors into brand ambassadors.
- c. **Understanding and Adoption by internal audiences and constituencies** – Working with the GFLCVB and other County representatives, Contractor will offer strategies to announce and convey the new brand to internal groups such as GFLCVB staff, County Tourist Development Council members, the hospitality industry, area Chambers of Commerce, governmental boards, or other important stakeholder groups. Contractor will help address those groups and explain the process, the research and competitive advantages of the new brand approach. Every effort will be made to educate, excite and unite County's constituencies in adoption and support of the new brand.

The purpose of this step is not to ask permission or get input, but to excite the marketing regarding the new brand and to unite the destination behind the direction.

## Step 6: Post Analysis

After the preceding steps, a period of post analysis will take place, allowing for review of brand implementation, determining brand penetration and continued probability of brand success. This effort allows County and Contractor to tweak and adjust branding efforts to assure a precise, sustainable and competitive brand. The method, process, and any additional costs of post analysis will be determined at a time deemed appropriate by the applicable Contract Administrator and Contractor.

### Deliverables:

As a process that provides tangible, final results, Contractor's process provides the following deliverables. Per County need, others can also be considered.

- Published Project Timeline and Project Management
- Reporting to client and client boards throughout process at key milestones
- Written reports of
  - Discovery
  - SWOT
  - Competitive Set (“comp set”) Identification and Analysis
  - Visitor Research
  - Conclusions/Outcomes with Recommendation
- Implementation plan including:
  - Brand implementation across all channels
  - Stakeholders acceptance and introduction
  - Market introduction and rollout
  - Brand Ambassador plan
- Brand
  - Description of destination position vis-à-vis comp set
  - Written articulation of Brand definition
  - Competitive brand promise
  - Brand Personality Description
  - Brand/Destination logo or another brand identifier
  - Destination Brand Tagline or Key Phrase
  - Brand vocabulary
  - Brand color palette
  - Logo set
- Brand Guidelines including Graphic Standards
- All graphic digital files related to brand use

### **Recommended Timeline and Sequence:**

From inception to completion, Contractor states that the entire project as outlined in this Exhibit will take six (6) months. As part of the Work Authorization for Initial Branding Services, County and Contractor will further specify any modifications of the projected project deadline.

### **Recommended Additional Options:**

As part of County's Work Authorization for Initial Branding Services, County may further elect any or all of the following additional optional services to be included at the Hourly Rate. No selection of any option shall increase the maximum amounts provided in Section 5.2. The maximum time to be incurred and any additional reimbursable costs for these additional options are specified below:

#### **Emotion Positioning Research**

Emotional Positioning Research is performed to identify County's unique emotional positioning vis-à-vis competitors. Emotional descriptive phrases generated in the branding focus groups are tested to see with which destinations (Broward and competing destinations) potential visitors associate certain phrases.

Final results will identify emotional positioning that Broward County "owns" vis-a-vis competitors.

Time Estimate Maximum: 177 hours

Reimbursable Costs: \$0

#### **Lifestyle Segmentation Research**

Lifestyle Segmentation Research identify optimal targeting by lifestyle and consumer self-identification. This research requires cooperation from hotel and vacation rental partners to generate household addresses for past visitors (names, phone numbers, email addresses are not required).

Time Estimate Maximum: 322 hours

Reimbursable Costs: \$0

## **Exhibit A-2 Public Relations Services**

### **Strategic Planning + Creative Idea Development**

- Develop and implement an annual strategic media relations plan, determining key focuses/initiatives for pitching and promotion.
- Identify local, regional and domestic/international media, key publications, targeted outlets and individual social influencers aligned with GFLCVB public relations and promotional needs.
- Coordinate public relations efforts with paid media, social media and advertising efforts to support a cohesive marketing approach.
- Enhance Public Relations (“PR”) campaign development through research and analysis of existing efforts.
- Generate a comprehensive plan for the implementation of any new brand elements and messaging for the destination, as it applies to the public’s perception of GFLCVB.

### **Media Relations**

- Maintain updated media lists and editorial contacts by segments of interest.
- Reactive and proactive media lead/request fulfillment.
- Distribute press releases to appropriate media – locally, regionally and nationally.
- Develop and pitch story ideas/leads as they relate to destination brand/identity stories, as well as GFLCVB core target initiatives.
- Create and implement monthly/annual pitch calendar.
- Conduct media audit to interview media on trends, strengths and opportunities.
- Track editorial calendars and pitch appropriate GFLCVB brand-focused leads.
- Support GFLCVB destination development through pitching and securing executive interviews and managing media relations across trade publications.
- Craft talking points for GFLCVB and County executives as needed.
- Execute detailed media training for GFLCVB staff and executives.
- Trend and competitive analysis.
- Heighten new media services – influencer/blogger relations, social media amplification and press release optimization.

### **Media Experiences + Press Trips**

- Manage and coordinate the development of individual media experiences to the destination.
- Directly host media in destination to ensure a fully immersive, positive experience that will translate to in-depth story placements.
- Execute group press trip(s), highlighting destination offerings, programs, initiatives, and industry partners, giving lift to the brand:
  - Plan and execute press trip, including itinerary creation and collaboration among

partners and GLFCVB.

- Pitch and secure agreed-upon amount of media.
- Conduct follow-up with all media attendees for secured stories.
- Execute social influencer programs/activations to generate extended visibility for GLFCVB and County.

### **Media Missions + Events**

- Execute media mission(s) on behalf of GLFCVB in agreed upon market based on destination priorities.
  - Conduct outreach and secure media appointments.
  - Draft and manage agenda / press materials.
  - Manage media mission logistics, travel, presentations, etc.
- Plan and execute media events for GLFCVB.
  - Pitch and secure all media attendees and conduct follow up post event.
  - Provide talking points for executives.
  - Manage run of show.
  - Coordinate vendors and partner involvement in events.
  - Function as spokesperson for event, as needed.
- Conference and tradeshow support

### **Consumer Events + Activations**

- Planning and facilitation of out-of-market consumer promotional events in key target markets to generate visibility and heighten brand awareness for the GLFCVB, promoting Broward County as a desired vacation and business destination.

### **Promotions + Partnerships**

- Pitch and secure broadcast opportunities, focusing on consumer television and radio programs in target markets.
- Plan and execute consumer promotions by partnering with aligned brands (print & digital) providing in opt-in lists from potential consumers.

### **Account Management**

- Hold client calls and provide counsel on storylines, destination programs, development and PR initiatives.
- Service day-to-day calls and emails from journalists, routing to the clients as necessary.
- Bi-weekly conference calls to discuss status of projects.
- Creation of press materials and press kits.
- Execute “discovery” and orientation, building relationships with key stakeholders, industry partners and GLFCVB staff.
- Research and study of destination’s visitation assets and activities.



### **Reporting + Analytics**

- Develop goals and measurements to define impact and success of editorial/promotional coverage.
- Provide media monitoring services through Cision.
- Monthly reporting of media coverage and outline of performance/account activity.

### **Cost Notes:**

- County will not incur any fees associated with Contractor travel to the GFLCVB for meetings or work with the GFLCVB in the Broward County area.
- The Hourly Fee does not include costs for secured FAM trips/events, purchase of clips, or additional expenses provided for in the Work Authorization.

## **Exhibit A-3 Website Design Services**

### **Background / Scope Synopsis:**

Anticipating the redevelopment of County's tourism brand, including consumer visual interface components, Contractor will coordinate and produce a "refresh" the County's current tourism website to reflect the redeveloped brand. The effort will be dependent upon finalization and approval of the new County tourism brand.

### **Recommended Scope, Project Inclusions and Deliverables:**

The project will provide a change in the user interface of County's existing tourism site, reflecting the new brand. The agency will assure that the application of the new brand assures visual consistency between the site and the GFLCVB's other branded marketing components.

### **Content refresh:**

The existing site contains a large number of pages that need to be reviewed to remove the current brand references and replace the appropriate, new brand direction and its references. To cover the site's primary pages to meet the new brand direction, Contractor estimates appropriately two hundred (200) pages to be refreshed and revised.

### **Digital Strategy:**

Working with Contractor's design team, Contractor and Simpleview will coordinate and work together to ensure SEO and navigation changes improve user experience.

### **Design and Application:**

- *Homepage: page template design, with one revision.*
- *Internal Pages: two template designs; one revision each.*
- *Design Project Management: project supervision, working with Simpleview on design to ensure design presented can implemented.*
- *Creative Direction.*
  - *Move mini-navigation with sub links, points of interest to footer, in order for visitor to focus on main navigation.*
  - *Restructure and enhance mega-menu.*
  - *More robust map feature.*
  - *Internal page redesign will allow for more visuals.*

### EXHIBIT B – PAYMENT SCHEDULE

The rates specified below shall be in effect for the entire Term unless otherwise expressly stated below. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the monthly Flat Fee Services payment described below and in Section 5.2.

Description	Unit	Amount
Flat Fee Services	Monthly Payment	One-twelfth (1/12) of the maximum not-to-exceed amount for Flat Fee Services during each County fiscal year as described in Section 5.2 (except for the First Fiscal year, which shall be one-sixth (1/6) of the amount for the First Fiscal Year).
Media buys (including both Flat Fee Services media buys and media buys for Commissioned Media Services)	Per Media Buy	Actual preapproved costs (no mark-up by Contractor)
Optional Services	Hourly (unless otherwise approved by the applicable Contract)	\$155/hour \$45/hour for Social Media Services
Commissioned Media Services (other than actual costs of the media buys)	Per media buy above \$4,000,000 per Fiscal Year of Initial Term	7.5% commission on the total price of the media buy over \$4,000,000 per Fiscal Year (unless otherwise agreed in the applicable Work Authorization).
	Per media buy above \$4,500,000 per yearly Extension Term (if exercised by County).	11.0% commission on the total price of the media buy over \$4,500,000 per Fiscal Year (unless otherwise agreed in the applicable Work Authorization).

Reimbursable Expenses: The following additional limitations and requirements apply to reimbursable expenses:

1. Transportation expenses to and from locations within Miami-Dade, Broward, and Palm Beach Counties will not be reimbursed.
2. The following administrative costs are part of overhead and will not be reimbursed:  
Telephone/long distance  
Color printouts (11x17 or smaller)  
Copies (color or black & white, 11x17 or smaller).

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Project: Advertising Agency  
Contract Manager: Sophia Jones

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$500,000	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$100,000	
<input type="checkbox"/> <b>CYBER LIABILITY</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	If claims-made form:		
			Extended Reporting Period of:	years	
			*Maximum Deductible:	\$10 k	
<input checked="" type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS)</b>	N/A	<input checked="" type="checkbox"/>	If claims-made form:	\$1,000,000	
			Extended Reporting Period of:	2 years	
			*Maximum Deductible:	\$10 k	
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):	Not to exceed 5% of completed value	Completed Value
			*Maximum Deductible:	\$10 k	
<b>Description of Operations:</b> "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. Policies shall be endorsed to provide 30 days written notice of cancellation to Certificate Holder, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from Certificate Holder. <b>*Contractor is responsible for all Deductibles.</b>					

**CERTIFICATE HOLDER:**  
Broward County  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

*Journal*  
Digitally signed by  
sophia@broward.org  
DN:  
c=US, ou=Broward Co  
ou=Contractors  
o=Contractors  
CN=20180201  
12:25:41-0810

Risk Management Division

**EXHIBIT D**  
**WORK AUTHORIZATION FOR AGREEMENT BETWEEN BROWARD COUNTY AND**  
**AQUA MARKETING AND COMMUNICATIONS, INC., FOR ADVERTISING SERVICES**  
**(RFP #GEN2116476P1)**

Work Authorization No. \_\_\_\_\_

This Work Authorization is between Broward County and Aqua Marketing and Communications, Inc. ("Contractor") pursuant to the Agreement, executed on \_\_\_\_\_. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

**Services to be provided:** [DESCRIBE IN DETAIL]

[Simple summary]

See Exhibit A for additional detail.

Agreement at issue is (check one)  Lump Sum/  Not-to-Exceed in the amount: \$ \_\_\_\_\_

**Are Services in this Work Authorization TDT Eligible? (check one)  YES  NO.**

*If Yes, Contractor must apply any available Unused Flat Fee Credit/Carryover Credit per terms of Agreement.*

The time period for this Work Authorization will be from the date of complete execution until \_\_\_\_ ( ) days after County's Notice to Proceed for the Services to be provided under this Work Authorization, unless otherwise extended or terminated by the Contract Administrator.

**Fee Determination:** Payment for services under this Work Authorization is as follows:

Services	\$ _____
General Services	\$ _____
Goods or Equipment	\$ _____
Total Cost of this Work Authorization	\$ _____

The foregoing amounts shall be invoiced by Contractor upon written acceptance by County of all goods and services provided under this Work Authorization.

**County**

	Contract Administrator		Date
Project Manager	Date	Board or Designee	Date

**Contractor**

	Signed		Date
Attest	Typed Name/Title		

## EXHIBIT E CBE Subcontractor Schedule and Letters of Intent

Contractor represents that the CBE participants referenced in the attached Letters of Intent have agreed by written subcontract to perform the percentage of work amounts set forth and that the following information regarding participating Subcontractors is true and correct to the best of his or her knowledge.



### LETTER OF INTENT BETWEEN BIDDER/OFFEROR AND COUNTY BUSINESS ENTERPRISE (CBE) FIRM/SUPPLIER

This form is to be completed and signed for each CBE firm. If the PRIME is a CBE firm, please indicate the percentage performing with your own forces.

Solicitation No.: RFP No. GEN2116476P1  
 Project Title: Advertising Agency Services  
 Bidder/Offeror Name: Aqua Marketing & Communications, Inc.  
 Address: 360 Central Avenue, Suite 420 City: St. Petersburg State: FL Zip: 33701  
 Authorized Representative: David M. Di Maggio Phone: 727-687-4670

CBE Firm/Supplier Name: Graphic Dynamics Inc  
 Address: 735 NW 7th Terrace City: Fort Lauderdale State: FL Zip: 33311  
 Authorized Representative: NAREN COOPER Phone: 954-728-8452

- A. This is a letter of intent between the bidder/offeror on this project and a CBE firm for the CBE to perform work on this project.
- B. By signing below, the bidder/offeror is committing to utilize the above-named CBE to perform the work described below.
- C. By signing below, the above-named CBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and CBE affirm that if the CBE subcontracts any of the work described below, it may only subcontract that work to another CBE.

#### Work to be performed by CBE Firm

Description	NAICS <sup>1</sup>	CBE Contract Amount <sup>2</sup>	CBE Percentage of Total Project Value
Offset Printing of Visitors Guide	32311	\$89,219.52	6 %
			%
			%

**AFFIRMATION:** I hereby affirm that the information above is true and correct.

**CBE Firm/Supplier Authorized Representative**

Signature: [Signature] Title: CEO Date: 5-9-19

**Bidder/Offeror Authorized Representative**

Signature: [Signature] Title: President Date: 5-9-19

<sup>1</sup> Visit [Census.gov](http://Census.gov) and select **NAICS** to search and identify the correct codes. Match type of work with NAICS code as closely as possible.

<sup>2</sup> To be provided only when the solicitation requires that bidder/offeror include a dollar amount in its bid/offer.

*In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.*

**EXHIBIT F**  
**Certification of Payments to Subcontractors and Suppliers**

RFP No. **GEN2116476P1**

Project Title \_\_\_\_\_

The undersigned Contractor hereby swears under penalty of perjury that:

1. Contractor has paid all Subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with the "Compensation" article of this Agreement, except as provided in paragraph 2 below.

2. The following Subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or supplier's name and address	Date of disputed invoice	Amount in dispute

3. The undersigned is authorized to execute this Certification on behalf of Contractor.

Dated \_\_\_\_\_, 20\_\_

\_\_\_\_\_ Contractor

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

STATE OF                    )  
COUNTY OF                )

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name of affiant) of \_\_\_\_\_ (name of entity), a \_\_\_\_\_ (state of organization) [ ] corporation or [ ] limited liability company, on behalf of the corporation or limited liability company. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
Signature of Notary Public

(NOTARY SEAL)

\_\_\_\_\_  
Name typed, printed, or stamped

\_\_\_\_\_  
Title, and Serial Number (if any)