

CONTRACT FOR
CREATIVE AND MEDIA PURCHASING

THIS CONTRACT is made as of this 24th day of September 2007, by and between **PARADISE ADVERTISING AND MARKETING**, a Florida corporation with its principal address at 150 2ND Ave. Ste. 800, St. Petersburg, Florida 33701 (hereinafter "Contractor") and the **BOARD OF COUNTY COMMISSIONERS, NASSAU COUNTY, FLORIDA**, a political subdivision of the state of Florida, (hereinafter "County").

WHEREAS, the County established **AMELIA ISLAND TOURIST DEVELOPMENT COUNCIL** (hereinafter "AITDC"), by Resolution 88-64, ratified by Ordinance No. 89-31, as amended; and

WHEREAS, the AITDC is responsible for the expenditure of the revenues generated by the tourist development tax, which expenditures shall be in to fund the Amelia Island Development Plan in accordance with the Ordinance 88-64; and

WHEREAS, on July 26, 2007, the County and the AITDC obtained bids in response to Request for Proposals for several advertising services, including Creative and Media Purchasing, Public Relations Services, and Website Design and Promotion; and

WHEREAS, an evaluating committee evaluated the bids and selected three firms, one for each of the three Request for Proposals; and

WHEREAS, each of the three selected firms is aware of the roles of the other firm and has agreed to work in conjunction with the other firms to meet the advertising needs of the County and the AITDC; and

WHEREAS, the County wishes to engage Contractor to provide Creative and Media Purchasing as more fully provided herein; and

WHEREAS, Contractor is agreeable to furnishing such services to the AITDC on the terms hereinafter described.

NOW THEREFORE, in consideration of the foregoing premises, it is mutually agreed by and between the parties hereto as follows:

SECTION ONE: SCOPE OF WORK:

1.1 The Contractor will develop and implement an integrated advertising, promotion, and other means of destination marketing, and communications plan (the "Integrated Communications Plain") Including but not limited to :

1.1.1. A strategic position and essential message for all audiences with which the County desires to communicate. In this regard, the Contractor will examine and consider market research, demographic data, and data

relating to the effectiveness of past and present advertising campaigns, as provided by AITDC, Amelia Island/Fernandina Beach/Yulee Chamber of Commerce, or Amelia Island tourism-related businesses and associations. The Contractor will not be required to conduct or supervise original market research except for an additional fee subject to a signed agreement entered into by both the parties for this additional service.

- 1.1.2. A media plan for appropriate media channels.
 - 1.1.3. Coordination and services necessary to implement the Integrated Communications Plan (account service).
 - 1.1.4. Buying all media.
 - 1.1.5. Budget control and traffic.
 - 1.1.6. Ongoing analysis of media response, using data to be compiled and supplied by the AITDC.
 - 1.1.7. From time to time, conduct conversion studies or other research projects using AITDC data.
- 1.2 Execute the Integrated Communication s Plan and execute all cooperative advertising, including but not limited to:
- 1.2.1. Finished art for approved creative concepts
 - 1.2.2. Copywriting
 - 1.2.3. Creative concepts for all element identified in the Integrated Communications Plan
 - 1.2.4. Art direction.
 - 1.2.5. Print, outdoor, motion picture, internet/web and broadcast production.
 - 1.2.6. Production of sales promotion, merchandising, display and other collateral materials for the AITDC's use.
- 1.3 Coordinate existing cooperative marketing opportunities and develop additional cooperative marketing opportunities, subject to the County's prior approval.
- 1.4 Contract and supervise subcontractors at County's expense only upon request by the County, to provide research and other promotional services, and integrate the performance of such contracts into the overall marketing plan of the AITDC, developed by the Contractor. Subcontractors for these purposes shall be chosen by, or subject to the

prior approval of the AITDC's designee, which approval shall not be unreasonably withheld or delayed. The Contractor shall use its commercially reasonable best efforts to negotiate subcontract provisions that allow the Contractor to cancel or modify any subcontract work in progress being conducted for the account of the County, predicated upon payment to the subcontractor for work and services performed through the effective date of the cancellation or modification.

1.5 In performance of its services under this Contract, the Contractor shall:

- 1.5.1. Produce advertising for AITDC only after first submitting copy and layout scripts and storyboards for written approval to County's designated representative.
- 1.5.2. Make no financial expenditures or commitments for the County's account for media or other costs or subcontracts without first obtaining the County's designated representative's written consent based on a written budget and an estimate of costs prepared by the Contractor and signed by an authorized County representative. Failure to comply will result in loss of Contractor fee on the unapproved expenditure.
- 1.5.3. In ordering the space, time or other means to be used for AITDC's advertising, endeavor to secure the most advantageous rates available; properly incorporate AITDC's advertising message in mechanical or other appropriate form and transmit it with proper instructions for the fulfillment of the order; check and verify insertions, displays, broadcasts or other means used in such manner as customary and good practices by advertising agencies; and verify invoices with proof of performance for space time, materials and services.
- 1.5.4. Hold for County and account for or return upon request to County any of the County's tangible personal property, which may from time to time be entrusted to Contractor for the purposes of this Contract.
- 1.5.5. Attempt to secure on behalf of AITDC public service announcements and bonus media, where possible.
- 1.5.6. The Contractor will report the financial status of the approved budget to the AITDC's designee within five working days of each month end. The AITDC will consolidate this information and report it quarterly to the County. The report will show purchases authorized, billed and paid as well as the partner portion of all cooperative programs. The Contractor agrees to furnish all reports required by the County.
- 1.5.7. The Contractor will attend all AITDC meetings, Marketing Committee meetings and such other meetings requested by AITDC and/or its designee.

- 1.5.8. From time to time at its own discretion, County's may elect to obtain certain marketing, research or other services directly from subcontractors, not through the Contractor. Such services or projects would be specifically requested and budgeted by the County. The Contractor would not be responsible for budgeting and supervising the services obtained directly or for the performance of such directly engaged subcontractors.
- 1.6 The Contractor shall obtain the County's prior approval of all services rendered under the terms herein.
- 1.7 County shall have the right to modify, reject, cancel or discontinue any work in progress and any related agreements or commitments entered into by Contractor on County's behalf, subject to applicable notice periods. In which event, the Contractor will be entitled to full payment for all charges incurred in connection with such work performed in advance to the modification, rejection, cancellation, or discontinuance in accordance to the terms and conditions stated hereunder.

SECTION 2: AGENCY COMPENSATION

- 2.1 The anticipated costs for the services provided for under this contract are based on the hourly rate schedule attached hereto as Appendix "A" and shall be paid as follows:
- 2.1.1 **Agency Fee:** The Contractor will be guaranteed a fee equal to \$67,500.00 annually which will be billed monthly at \$5,625.00. Media expenditures up to \$382,500.00 will be billed to the County at net.
- 2.1.2 **Creative and Production:** The Contractor shall obtain prior approval from the County or its designee for all creative and production costs. The budget and expenditures for creative and production costs shall not exceed One Hundred Thousand Dollars (\$100,000.00).
- 2.2 The Contractor shall bill and the County shall pay for services rendered as follows:
- 2.2.1 The Contractor shall provide monthly statements along with supporting documentation, in such form as the County may reasonably direct to suffice its auditing obligations. Such documentation shall include a detailed summary of expenses, proof of performance and copies of original invoices. See paragraph 1.5.6. above.
- 2.2.2 The County shall pay all such monthly statements within 45 days of receipt by the County pursuant to the Florida Prompt Payment Act. Payment shall be made by U.S. mail to the address for Contractor indicated here. Payments not made within 45 days from rendition of statement shall bear interest at the legal rate, provided that no interest shall accrue on any portion of a statement that is questioned in good faith by the County or its designee.

- 2.3 **Purchases Made by Agency for AITDC.** Any purchases of goods or services made by the Contractor on behalf of the County shall be billed to the County at net purchase price with specific detail of any fee if prescribed under this contract. Purchase order approval is required by the AITDC's designated representative prior to placement of orders over \$750.00.

All bills associated with the Contractor's production costs, such as color copies, color separations, scans, photography and printing, or other work on behalf of the AITDC performed outside the agency of record, shall be paid by the Contractor and billed to the AITDC on a "net basis". Travel to and from Nassau County, and expenses incurred while in Nassau County, are the responsibility of the Contractor, and are not reimbursable.

TERMS AND CONDITIONS

- 3.1 **Rules, Regulations, Laws, Ordinances, & Licenses.** The Contractor shall observe and obey all laws, ordinances, rules, and regulations of the federal, state, and County Government, which may be applicable to the service being provided. The Contractor shall have or be responsible for obtaining all necessary permits or licenses required in order to provide this service.
- 3.2 **Independent Consultant.** The Contractor is an independent contractor and is not an employee or agent of Nassau County or the Chamber of Commerce. This contract does not obligate or commit the Nassau County or AITDC to any external third party for the payment of any money.
- 3.3 **Contingent Fees Prohibited.** The Contractor warrants that it has not employed or retained a company or person, other than a bona fide employee, consultant or sub-consultant, working in its employ, to solicit or secure a contract with the County and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee, consultant or sub-consultant, working in its employ any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the county.
- 3.4 **Property Rights.** All concepts, slogans, or plans submitted or developed by the Contractor for AITDC during the term hereof, whether or not used, and any and all layouts, copy, artwork, films, digital images, web designs and functionality as well as other tangible material which the Contractor prepares for AITDC or purchases for its account pursuant to a public relations or promotional campaign for AITDC, are the County's property exclusively, provided that the County has paid the invoices rendered thereof, if any, except copyright material and talent purchased for the County shall be subject to the property rights of the third party owners, and the County shall only obtain the use of such material for the time periods for which it has been purchased (e.g., the use of art, photographs, and talent may require an annual payment for continued use). There

shall be no additional compensation for the rights and property granted under this subparagraph.

All contracts for the acquisition or use of materials and properties and for the employment of talent shall be entered into and signed by the Contractor for the County to the end that all materials, properties and rights obtained by virtue of such contracts shall become the property of the County. The County understands and acknowledges that the rights to use copyrighted material and talent are for specific periods of time, and that renewal or extension payments are required to use the material and talent for longer periods. The Contractor may only deliver such materials and talent for the period of time for which the use has been purchased.

All tangible and intangible property acquired on behalf of AITDC shall be the property of the County and shall be used exclusively by the Contractor for promotion of Amelia Island tourism on behalf of AITDC. The County reserves the right of final approval of the disposition of said property.

- 3.5 **Duration and Termination.** This Agreement shall commence on October 1, 2007, and shall continue through, September 30, 2008. Two (1) one-year extensions may be granted on this contract to the Contractor upon recommendation by the AITDC and the AITDC's recommendation to the County and the County's subsequent approval. To provide for a smooth continuation of services, the County agrees to make its decision no later than July 31, 2008.

This Contract may be terminated by the County, with or without cause, immediately upon written notice to Contractor. Unless the Contractor is in breach of the agreement executed, the Contractor shall be paid for services rendered to the County's satisfaction through the date of termination. After receipt of a Termination Notice and, except as otherwise directed by the County, the Contractor shall:

- A. Stop work on the date to the extent specified.
- B. Terminate and settle all orders and subcontractors relating to the performance of the terminated work.
- C. Transfer all work in progress, completed work, and other material related to the terminated work to the County.

- 3.6 **Availability of Funds.** The County's performance and obligation to pay under this Contract is contingent upon the collection of bed taxes. In the event the collection and allocation of bed taxes upon which this Contract is dependant are withdrawn, this Contract is terminated, and the County has no further liability to Contractor beyond that already incurred by the termination date.

The County hereby covenants to budget and appropriate from legally available funds. The parties hereby understand and agree that no ad valorem taxes are pledged to secure this Contract.

3.7 **Indemnification.** The Contractor shall at its own costs during the entire term of this contract maintain continuously in force an advertiser's liability policy for the benefit of the County in the minimum amount of One Million Dollars (\$1,000,000.00). In the event insurance is not available in that amount, the Contractor shall not commence performance of this Agreement until such time that insurance coverage or a mutually satisfactory alternate arrangement is in full force and effect.

The Contractor shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and any persons employed or utilized by the consultant in the performance of the agreement.

3.8 **Equal Employment.** In accordance with Federal, State and Local law, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin or handicap.

3.9 **Assignment and Delegation.** Neither party may assign any rights or delegate and duties under this Agreement without the express prior written consent of the other party.

3.10 **Prompt Payment Act.** Payments will be made within forty-five (45) days from receipt of the invoice, pursuant to Florida's Prompt Payment Act, Florida Statutes, Section 218.74.

3.11 **Federal and State Tax.** The County is exempt from payment of Florida State and Use Taxes and will provide a copy of the County's exemption certificate if requested. The Contractor shall not be exempted from paying tax to their suppliers for materials used to fulfill contractual obligations with the county, nor is the Contractor authorized to use the county's Tax Exemption Number in securing such materials. The Contractor shall be responsible for payment of his/her own FICA and Social Security benefits.

3.12 **Governing Laws/Venue:** All contractual arrangements hereunder shall be consistent with, and be governed by, the ordinances of Nassau County, the laws of the State of Florida, both procedural and substantive, and applicable federal statutes, rules and regulations. Any and all litigation arising under any contractual arrangement shall be brought in the appropriate court in Nassau County, Florida.

3.13 **Conflict of Interest.** The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, with the County or Chamber of Commerce, which would conflict in any manner with the performance of services required. The Contractor further represents that no person having any interest shall be employed for said performance.

The Contractor shall promptly notify the County in writing by certified mail of any potential conflicts of interest for any prospective business association, interest, or other circumstance, which may influence or appear to influence the Contractor's judgment or

quality of services being provided. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work the Contractor may undertake and request an opinion of the County, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Contractor.

The County agrees to notify the Contractor of its opinion by certified mail within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the county, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the County shall so state in the notification and the Contractor shall, at his/her option enter into said association, interest, or circumstance, and it shall be deemed not in conflict of interest with respect to services provided to the County by the Contractor.

- 3.14 **Public Entities Crimes.** A person or affiliate who has been placed on the convicted vendors list following a conviction for public entity crime may not contract to provide any goods or services to a public entity, may not contract with a public entity for the construction or repair of a public building or public work, may not contract for the leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes, Section 287.017, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By its execution the Contractor certifies that they are qualified to do business with Nassau County in accordance with Florida Statutes.
- 3.15 **Acceptance of Services.** Receipt of service shall not constitute acceptance. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the performance meets specifications and or all conditions. Should the delivered service differ in any respect from specifications, payment will be withheld pursuant to Florida Statutes, Section 218.76, until such time as the supplier takes necessary corrective action.
- 3.16 **Deviations from Specifications.** The Contractor shall clearly indicate, as applicable, all areas in which the services proposed do not fully comply with the requirements of this Contract. The decision as to whether an item fully complies with the stated requirements rests solely with Nassau County.
- 3.17 **Disputes.** Any dispute arising under this Contract shall be addressed by the representatives of the County and the Contractor as set forth herein. Disputes shall be set forth in writing to the County Coordinator with a copy to the Project Manager and provided by overnight mail, UPS, FedEx, or certified mail, with a response provided in the same manner prior to any meetings of representatives. The initial meeting shall be with the County Coordinator and the Project Manager or their designee and a representative of the Contractor. If the dispute is not settled at that level, the County Attorney shall be notified in writing by the Project Manager or his/her designee, and the

County Attorney and the County Coordinator and the Project Manager or their designee(s) shall meet with the Contractor's representative(s). Said meeting shall occur within sixty (60) days of the notification by the County Coordinator. If there is no satisfactory resolution, the claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if not disposed of by agreement as set forth herein, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Contractor. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Contractor. Contractor shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

No failure by a party to this Agreement to object to or to take affirmative action with respect to any conduct of the other party which is in violation of the terms of this Agreement shall be construed as a waiver of any future violation, breach or wrongful conduct.

- 3.18 **Retention of Records /Access and Audits.** The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of work. The County and the Clerk of Court shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the County's or the Clerk's expense, upon five (5) days' written notice.

All records in any manner whatsoever assigned to the project, or any designated portions thereof, which are in the possession of the Contractor or the Contractor's sub-consultants, shall be made available, upon request by the County, for inspection and copying upon written request of the County. Additionally, said records shall be made available, upon request by the County to any state, federal or other regulatory authorities and any such authority may review. Said records include, but are not limited to, all submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings which document the project. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel in performing the obligations of this Contract and the record of expenses incurred by the Contractor in its performance under said contract.

The Contractor shall maintain and protect those records for no less than three (3) years after final completion of the contract, or for any longer period of time as may be required by applicable law.

- 3.19 **Gift Clause Per Nassau County.** No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any County employee, official, elected or appointed.

3.20 **Notices.** All notices pertaining to this Contract shall be set forth in writing and transmitted either by personal hand delivery or through the U.S. Postal Service by certified mail; return receipt requested to the following listed persons:

Nassau County Board of County Commissioners
ATTN: County Administrator, or designee
P.O. Box 1010
Fernandina Beach, Florida 32035

Amelia Island Tourist Development Council
ATTN: _____

Fernandina Beach, Florida _____

Paradise Advertising and Marketing
ATTN: Cedar Hames, President
150 Second Ave. North Ste. 800
St. Petersburg, FL 33701

3.21 **Force Majeure.** If either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of (or if failure to perform is caused by) acts of God, natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party or terrorism (each a “Force Majeure Event”), the affected party shall notify the other party and exercise commercially reasonable efforts to resume performance. Upon receipt of such notice, this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, immediately terminate this Agreement, subject to the obligations of payment, indemnification, and delivery of materials, all of which shall survive termination.

3.23 **Modification.** This writing contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. No agent, employee, or other representative of either party is empowered to alter the terms of this Agreement, unless done in writing and signed by authorized officers of the Agency and the County.

3.24 **Time Is Of The Essence.** Time is of the essence of this agreement.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed on this 24th day of September, 2007.

PARADISE ADVERTISING AND MARKETING, INC.

By: Cedar Hames

Name: GEDAR HAMES
Title: President

**BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA**

Jim E. Higginbotham
JIM E. HIGGINBOTHAM
Its: Chairman

ATTEST AS TO CHAIRMAN'S
SIGNATURE:

John A. Crawford
JOHN A. CRAWFORD
Its: Ex-Officio Clerk

REVIEWED BY GENE KNAGA
DEPUTY CONTROLLER
Gene Knaga DATE 9/24/07

Approved as to form by the
Nassau County Attorney

David A. Hallman
DAVID A. HALLMAN