

**AGREEMENT BY AND BETWEEN PASCO COUNTY, FLORIDA
AND
ICMA CONSULTING SERVICES**

THIS AGREEMENT is made and entered into, by and between Pasco County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and ICMA CONSULTING SERVICES, a whose address is 777 North Capitol Street, NE, Suite 500, Washington, DC 20002, hereinafter referred to as the "CONSULTANT."

RECITALS

WHEREAS, the COUNTY believes it to be in the public interest to identify methods and strategies by which government services can be operated more efficiently and provided more cost effectively to the residents of Pasco County who are desirous of such services; and

WHEREAS, the CONSULTANT submitted a response to the County's Request for Statements of Qualification for Professional Consulting Services Related to Strategic Planning, Process Improvement, Vision Facilitation and Related Services (RSQ #09-008) to secure such services and was deemed to be the most qualified and responsive proposer; and

WHEREAS, the COUNTY has examined the services and facilities of the CONSULTANT, and found that the CONSULTANT provides the facilities and services needed by the residents of Pasco County to achieve the goals set forth in the RSQ; and

WHEREAS, the COUNTY has determined that the best interests of its citizens will be served by entering into an Agreement with the CONSULTANT for the furnishing of services and facilities to be provided by the CONSULTANT as set forth in further detail in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1
Scope of Service

The CONSULTANT shall provide for the residents of Pasco County the services described in EXHIBIT A, attached hereto and incorporated by reference herein utilizing the Project Team identified in the RSQ response dated November 13, 2008 which is also incorporated herein as Exhibit B. Should there be any conflict in the scope of services between Exhibits A and B, the terms of Exhibit A shall control. The services shall be provided as part of the milestones and within the timeframe provided for in Exhibit E, which is incorporated herein by reference.

ARTICLE 2

Term of Agreement

This Agreement shall be effective upon execution by both parties and shall continue for a fifteenth (15) month term thereafter unless other extended or terminated earlier as provided herein.

ARTICLE 3 Consideration and Limitation of Costs

For its performance under this Agreement, the CONSULTANT will be compensated for services to be performed in an amount not to exceed \$159,450 (exclusive of costs) as further set forth in Exhibit D

All payments for services provided under this Agreement shall be made on a reimbursement basis upon the completion of each of the milestones for services listed in Exhibit E. The COUNTY also agrees to pay up to \$15,000 in travel and other costs as part of the overall compensation provided for under this section. All travel as well as any other expenses over \$100.00 must be pre-approved by the County Administrator or his designee. All costs over and above air travel costs will be reimbursed as provided under Section 112.061, F.S.

The COUNTY agrees to process payments for services following Exhibit D attached hereto. All invoices will be addressed to the County Administrator or his designee as referenced in Article 23.

The COUNTY and the CONSULTANT agree that each is bound by the applicable provisions of the Florida Prompt Payment Act, Section 218.70 - et seq., F.S. in connection with this Agreement.

All funding under this Agreement is subject to availability and the COUNTY reserves the right to reduce the not to exceed amount provided for in this section. The COUNTY shall be the final authority as to the availability of funds and how available funds will be allotted.

ARTICLE 4 Maintenance and Review of Records

The CONSULTANT, and any of its subcontractors providing any of the services required to be performed by the CONSULTANT under this Agreement, shall maintain adequate records and accounts, including but not limited to property, personnel and financial records, and supporting documentation to assure a proper accounting for all COUNTY funds received under this Agreement for a period of six years from the date of final payment to the CONSULTANT or its subcontractors, as applicable, under this Agreement or the termination of this Agreement, whichever occurs later. (Such six-year period is hereinafter referred to as the "Audit Period."). The COUNTY and its authorized agents shall have the right, and the CONSULTANT, or its subcontractors, as applicable, will permit the COUNTY and its authorized agents, to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions

therefrom, and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to personnel and employment records for the Audit Period. All such records, accounts and documentation shall be made available to the COUNTY and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the COUNTY may deem necessary during the Audit Period. The COUNTY'S right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether local, state or federal associated with the performance of this Agreement. The CONSULTANT shall ensure that any subcontractor providing any services the CONSULTANT is required to provide under this Agreement shall recognize the COUNTY'S right to examine, inspect and audit its records, accounts and documentation in connection with its provision of services required to be provided by the CONSULTANT under this Agreement. If an audit is begun by the COUNTY or other agency, whether local, state or federal, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued. This Article 5 shall survive the termination of this Agreement.

ARTICLE 5 Indemnification

The CONSULTANT shall indemnify, hold harmless, and defend the COUNTY, its Board of County Commissioners, its agents and employees from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation by the CONSULTANT, its agents, subcontractors, assigns, heirs, and employees during performance under this Agreement. The extent of this indemnification shall not be limited in any way as to the amount or types of damages or compensation payable to the COUNTY on account of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement. In any and all claims against the COUNTY or any of its agents or employees by any employee of the CONSULTANT, any subcontractor, heir, assign, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 7 shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 6 Insurance

The CONSULTANT shall procure and maintain throughout the Term of this Agreement, on behalf of itself and the COUNTY, the insurance specified on, and as required by, Exhibit C, attached hereto and incorporated by reference herein, and as stated below in this Article 6. All insurance shall be from responsible companies duly authorized to do business in the State of Florida.

The CONSULTANT shall ensure that the COUNTY and its Board of County Commissioners are named as additional insured parties as to the actions of the CONSULTANT, its employees, agents, assigns, and subcontractors, performing or providing materials and/or services to CONSULTANT during the performance of this Agreement, on (i) all auto liability policies and general liability policies required to be obtained by the CONSULTANT pursuant to this Agreement, and (ii) all other insurance policies required by this Agreement where such an endorsement is available in the industry. All such insurance policies shall also contain a Severability of Interests provision. Every insurance policy must provide for thirty (30) days prior written notice to the COUNTY of any cancellation, intent not to renew, or reduction in the policy coverage.

ARTICLE 7
Equal Opportunity Clause

The CONSULTANT agrees to comply with the requirements of all applicable state, federal, and local laws, rules, regulations, ordinances and Executive Orders prohibiting and/or relating to discrimination, including but not limited to, Executive Order 11246, as amended and supplemented 41 CFR § 60-1.4, and all such applicable state, federal and local laws, rules, regulations, ordinances and Executive Orders, including but not limited to, Executive Order 11246, as amended and supplemented

ARTICLE 8
Conflict of Interest

The CONSULTANT represents that it presently has no interest, and shall acquire no such interest, financial or otherwise, direct or indirect, nor engage in any business transaction or professional activity or incur any obligation of any nature which would conflict in any manner with the performance of the scope of services required hereunder.

Without receiving prior written authorization by the COUNTY, the CONSULTANT shall not (i) retain any individual or company with whom the CONSULTANT or any individual member thereof has a financial or other conflict of interest; nor (ii) in fulfillment of this Agreement, do business with a for-profit entity in which the CONSULTANT or any individual member has a financial or other interest therein.

The CONSULTANT warrants to the COUNTY that no gifts or gratuities have been or will be given to any COUNTY employee or agent, either directly or indirectly, to obtain this Agreement.

ARTICLE 9
Drug Free Workplace

The CONSULTANT shall assure the COUNTY that it will administer, in good faith, a policy designed to ensure that the CONSULTANT is free from the illegal use, possession, or distribution of drugs or alcohol.

ARTICLE 10
Governing Laws

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and venue shall be in Pasco County, Florida.

ARTICLE 11
Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Additionally, pursuant to COUNTY policy, a conviction of a public entity crime may cause the rejection of a bid, offer, or proposal. The COUNTY may make inquiries regarding alleged convictions of public entity crimes. The unreasonable failure of a bidder, offeror or proposer to promptly supply information in connection with an inquiry may be grounds for rejection of a bid, offer, proposal or reply.

The CONSULTANT represents for itself and its affiliates that it is not prohibited from entering into this Agreement by Section 287.133, Florida Statutes.

ARTICLE 12
Compliance With Applicable Laws

The CONSULTANT shall comply with the requirements of all applicable federal, state and local laws and the rules and regulations promulgated thereunder, including but not limited to, the Health Insurance Portability and Accountability Act ("HIPAA") (42 USC §1320d) and the regulations promulgated thereunder, if applicable.

ARTICLE 13
Assignment

This Agreement may not be assigned nor subcontracted in whole or in part without the prior written consent of the COUNTY.

ARTICLE 14
Waiver

A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of

defective performance.

ARTICLE 15
Additional Rights and Remedies

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the parties under law or in equity which may now or in the future be applicable.

ARTICLE 16
Order of Precedence

In the event of any conflict between the provisions of this Agreement and the exhibits, the provisions of the Agreement shall control over the provisions of the exhibits.

ARTICLE 17
Severability

Article headings have been included in the Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement. In the event any section, sentence, clause, or provision of this Agreement is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

ARTICLE 18
Survivability

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

ARTICLE 19
Third Party Beneficiaries/Independent Contractor

This Agreement is for the benefit of Pasco County and the CONSULTANT. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Agreement. CONSULTANT acknowledges and agrees that it is acting as an independent contractor in performing its obligations hereunder and not as an agent, officer or employee of the COUNTY.

ARTICLE 20
Entire Agreement/Modifications

This writing embodies the entire agreement and understanding between the

parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This Agreement may only be amended or extended by a written instrument executed by the COUNTY and the CONSULTANT expressly for that purpose.

ARTICLE 21
Termination of Agreement for Non-Performance

In addition to the exercise of any other remedies available to it at law or in equity and any other provision of this Agreement, the COUNTY may terminate this Agreement for the CONSULTANT'S non-performance, as determined by the COUNTY, upon seven (7) days written notice to the CONSULTANT.

In such event, Consultant shall be entitled to receive and the COUNTY shall pay the Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

a. As a condition of such payment, the COUNTY may require Consultant to deliver to the COUNTY all work product completed as of such date, and in such case such work product shall be the property of the COUNTY unless prohibited by law, and Consultant consents to the COUNTY's use thereof for such purposes as the COUNTY deems appropriate.

b. Payment need not be made for work which fails to meet the standard of performance specified in this Agreement.

ARTICLE 22
Fiscal Non-Funding Clause

This Agreement is subject to funding availability. In the event sufficient budget funds to fund this Agreement become reduced or unavailable, the COUNTY shall notify the CONSULTANT of such occurrence, and the COUNTY may terminate this Agreement upon thirty (30) days prior written notice to the CONSULTANT. The COUNTY shall be the final authority as to the availability of funds and how available funds will be allotted.

ARTICLE 23
Notice

Any notices required or permitted to be given hereunder shall be sent by United States certified mail, return receipt requested, or by overnight delivery service or personal delivery with signature verification, to the attention of the following representatives of the parties:

A. COUNTY:

Pasco County Office of the County Administrator
ATTN: Michele Baker, Chief Assistant County Administrator
7530 Little Road, Suite 340
New Port Richey, FL 34654

B. CONSULTANT:

ICMA Consulting Services
Craig Rapp, Director
777 North Capitol Street, NE, Suite 500
Washington, DC 20002

ICMA
Jeffrey Gould,
Director, Contracts & Grants Administration
777 North Capitol Street, NE, Suite 500
Washington, DC 20002

Any notice sent in accordance with this Article 23 shall be deemed given two-days after deposit in the U.S. Mail, if sent certified mail, or upon receipt, if sent by overnight delivery service or personal delivery. The act of refusal by a party of delivery of a notice sent in accordance with this Article 25 shall be deemed acceptance of such notice by such party.

ARTICLE 24
Access To Records

If applicable, the CONSULTANT shall comply with the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers, and records made or received by the CONSULTANT in connection with this Agreement.

ARTICLE 25
Execution in Counterparts

It is acknowledged by the parties that this Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same document considered effective upon the date specified in Article 2 hereof.

IN WITNESS WHEREOF, the CONSULTANT and the COUNTY have caused these presents to be executed in their names the day and year first above written.

ATTEST:

COUNTY: PASCO COUNTY, FLORIDA

BY: _____
Paula S. O'Neil
Clerk & Comptroller

BY: _____
Jack Mariano, Chairman

DATE APPROVED: _____

ATTEST:

CONSULTANT: ICMA CONSULTING SERVICES

WITNESS

WITNESS

BY: _____
AUTHORIZED OFFICIAL

(PRINTED NAME OF SIGNED)

(TITLE)

(DATE)

ACKNOWLEDGEMENT OF CONSULTANT, IF A CORPORATION

STATE OF _____,
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2009,
by _____ of _____
a Florida corporation, on behalf of the corporation, pursuant to the powers conferred upon said
officer or agent by the corporation. He/she personally appeared before me at the time of
notarization, and is personally known to me or has produced a _____
as foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 2009.

(Official Notary Signature and Notary Seal)

Commission Number

(Name of Notary typed, printed or stamped)

Commission Expiration Date

EXHIBIT A

SCOPE OF SERVICE AND CONSIDERATION