




Interoffice Memorandum

AGENDA ITEM

October 26, 2018

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Eric Ushkowitz, Economic Development Administrator
Office of Economic, Trade and Tourism Development 

SUBJECT: November 13, 2018 – **Consent Agenda Item**
Approval and execution of Orange County, Florida and Orlando Economic Partnership, Inc. Agreement for Branding and Marketing.

The FY 2018-19 Orange County budget provides for \$500,000 towards a regional business branding initiative, contingent upon this agreement. The Orlando Economic Partnership, Inc. (OEP) will manage the program and be responsible for the marketing efforts related to the initiative. The funding will be disbursed in two phases. Upon execution of this agreement, \$250,000 will be processed based on money already raised in a funding campaign. The remaining \$250,000 will be released upon matching funds being raised in the amount of \$500,000 by the OEP.

In order to expedite the disbursement of funds, it is required that the Board approve and execute the grant agreement.

ACTION REQUESTED: Approval and execution of Orange County, Florida and Orlando Economic Partnership, Inc. Agreement for Branding and Marketing and authorization to disburse \$500,000 as provided in the FY 2018-19 adopted budget.

EU/tp

ORANGE COUNTY, FLORIDA
and
ORLANDO ECONOMIC PARTNERSHIP, INC.
AGREEMENT
for
BRANDING AND MARKETING

THIS AGREEMENT is entered into as of the date of execution of the second of the two parties hereto, by and between Orange County, a charter county and political subdivision of the State of Florida, hereinafter referred to as the “Agency,” and the Orlando Economic Partnership, Inc., a not-for-profit corporation organized under the laws of the State of Florida, hereinafter referred to as the “Partnership” (hereinafter collectively referred to as the “Parties”).

RECITALS

1. The Parties executed an Agreement for Economic Development Services for Fiscal Year 2018-2019 (hereinafter referred to as the “Master Agreement”) on November NOV 13 2018 2018 for the purpose of authorizing the Partnership to perform certain services for the benefit of the Agency.
2. The Agency finds that the Partnership providing information, data, marketing and advertising services to promote the Agency and its brand serves as a valid public purpose under the laws of Florida.
3. The Parties agree that, under the terms of this Agreement, the Partnership will administer a promotional marketing campaign featuring the regional business brand for Orlando and Orange County, Florida, as a business destination.
4. In performing services under this Agreement, the relationship between the

Agency and Partnership is one of independent contractor, and Agency and Partnership by execution of this Agreement do not change the independent status of the Partnership. The Partnership is not an alter ego of the Agency and has no participation in any aspect of the Agency's decision-making process, and no term or provision of this Agreement shall be construed as making the Partnership the agent, servant, or employee of the Agency. The Partnership is merely providing professional expertise.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

ARTICLE I

SERVICES TO BE PERFORMED

1. The Partnership shall provide the following services:
 - a. Take all actions necessary, including but not limited to, purchasing print advertising, commercials, website/social media, and other advertising, to promote, market, and advertise the Orlando and Orange County, Florida region as a business location through local, regional, national and international marketing campaigns. The advertising should include, but is not limited to, the following types of promotions:
 - i. Print media in targeted publications;
 - ii. Digital advertising including Search Engine Marketing (SEM), Retargeting, Web-based advertising, e-newsletter advertising and social media advertising;
 - b. Coordinate with staff of the Agency, as well as with other business and trade groups in the local and regional market, to achieve cooperation and communication on business and economic development matters, including promoting, marketing, and advertising the Orlando and Orange County, Florida region as a business location.

2. The Agency's Economic Development Department shall engage with the Partnership in ways to include the following:

a. Designating an Agency representative to coordinate with the Partnership on the efforts described herein.

b. Advance branding, marketing, and promotional projects in Orange County and the regional area in conjunction with the Partnership.

3. The Partnership has developed a FY 2018-19 Business Plan and Budget, which is attached hereto as Exhibit "A" and is incorporated herein by reference. The Partnership agrees to use commercially reasonable efforts, such as those described in Article I, Section 1 above, to attain such goals and plans in connection with the performance of the services described in Article I, Section 1 above, it being understood that such objectives and strategies may be modified or adjusted, from time to time, by the Board of Directors of the Partnership.

4. The Partnership shall notify the Agency if sufficient staff, facilities or equipment necessary to deliver the agreed upon services cannot be maintained, at which time this Agreement may be modified or terminated by the parties. Failure to notify the Agency of any such deficiencies, or to adequately provide the services described above, shall be a breach of this Agreement and a ground for termination. The determination of whether services have been adequately provided shall be made upon majority vote of the Agency's governing board after notice to the Partnership and an opportunity to be heard.

ARTICLE II

PAYMENTS

1. So long as the Partnership is in compliance with all material terms of this Agreement and the Business Plan and Budget, attached hereto at Exhibit "A," the Agency shall

pay to the Partnership a total sum not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) during the Agency's 2018-2019 fiscal year, beginning October 1, 2018.

a. One half of the payment shall be paid by the Agency to Partnership upon execution of this Agreement by both parties.

b. The remaining one half of the payment will be paid by the Agency to the Partnership following the Agency's receipt of an invoice accompanied by written evidence from the Partnership that the Partnership has successfully completed its fundraising efforts, which are more thoroughly described in Exhibit "A" hereto, but which shall, at a minimum, include commitments for an additional \$500,000.00 in funding from sources other than Orange County.

2. Payments under this Agreement shall be made in accordance with the Florida Prompt Payment Act (Chapter 218, Florida Statutes), following the receipt of the Partnership's invoice.

3. Partnership shall provide to Agency annual reports as described in Article VI of this Agreement.

4. The Partnership is liable for and accepts responsibility for repayment of any funds disbursed under the terms of this Agreement which may be deemed disbursed in error or for failure to follow applicable contractual requirements.

ARTICLE III

TERM OF AGREEMENT, TERMINATION AND NOTICE

1. The term of this Agreement is for one year and shall commence on October 1, 2018; provided, however, that this Agreement may be extended for up to five (5) one-year terms subject to funding by Agency in subsequent budget years.

2. Either party may terminate this Agreement thirty (30) days after receipt by the other party of notice of intent to terminate. In the event of termination, the Agency shall pay for services rendered by the Partnership to the date of termination. If payments are made to the Partnership before services are rendered, the Partnership shall refund to the Agency all excess money paid for services which would have been rendered after the date of termination.

3. Any notices required or allowed hereunder shall be in writing and sent by certified mail, return receipt requested, or in person with proof of delivery, to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:

PARTNERSHIP: Crystal Sirey
Executive Vice President
Orlando Economic Partnership, Inc.
301 East Pine Street, Suite 900
Orlando, Florida 32801

AGENCY: Mayor Teresa Jacobs
Orange County Board of County Commissioners
201 South Rosalind Avenue
Post Office Box 1393
Orlando, Florida 32802-1393

ARTICLE IV

ASSIGNMENT

The services to be rendered by the Partnership are personal in nature. The Partnership shall not assign any rights or duties under this Agreement to any other party without prior written permission of the Agency.

ARTICLE V

INDEMNITY AND INSURANCE

1. To the fullest extent permitted by law, the Partnership will defend, indemnify and hold harmless the Agency from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from the performance of its operations under this Agreement.

2. The Partnership shall maintain commercial general liability coverage for all operations including but not limited to Contractual, Products and Completed Operations, Advertising and Personal Injury. The limits shall not be less than \$1,000,000 per occurrence. All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Agency. The Agency shall be specifically included as an additional insured on the Partnership's general liability policy.

ARTICLE VI

RECORDS AND REPORTING

1. The Partnership shall keep orderly and complete records of its accounts and operations. The Partnership shall maintain a system of internal controls adequate to safeguard and ensure proper use of governmental and other funds that it may receive. The Orange County Comptroller (or designee) shall have the right to audit these records and controls from time to time for adequacy, proper use of funds, and for compliance by the Partnership with the terms, conditions, obligations, and requirements of this Agreement. The Comptroller (or designee) shall have full access to all records, documents, and information, whether on paper or electronic media, of the Partnership necessary to perform this review in accordance with the law. The Agency, the Comptroller (or her designee) and the Partnership agree to comply with Section

288.075(2), Florida Statutes, as it relates to the records of the Partnership. The Partnership shall maintain all records necessary for audit for five years subsequent to the Agreement or completion of the audit except for those records which are held by the OEP and are deemed confidential and exempt from Section 119.07, Florida Statutes, and Section 24(a), Article I of the State Constitution in accordance with Section 288.075, Florida Statutes.

2. The Partnership is an independent contractor not acting as the alter ego of the Agency, nor is it authorized to commit the Agency or its funds to any agreement. The Partnership is being paid for certain services rendered as set forth herein. While a member of the Agency's governing body may serve on the Partnership's governing board, the Agency and the Partnership are two separate and autonomous entities. As such, the parties agree that documents and records kept by the Partnership are not intended to be subject to the Florida Public Records Law.

3. The Partnership shall maintain all program records related to the services provided under this Agreement and submit to the Agency, on a timely basis, periodic reports of major Partnership announcements, accomplishments, and organizational changes. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

4. The Partnership shall provide to Agency an annual report and presentation to the Agency for the duration of this Agreement.

5. Within fifteen (15) business days of the close of Partnership's fiscal year, the Partnership will provide to the Agency a report of the significant activities and accomplishments of the Partnership as it relates to the subject matter of this Agreement. Specific reference will be

made to the Partnership's activities and accomplishments relating to the duties described in Article I, above, and the Business Plan and Budget (Exhibit "A" hereto).

6. In the event this Agreement is extended or renewed by mutual written Agreement of the parties, within fifteen (15) days of the Annual Meeting of the Partnership's Board of Directors, the Partnership will provide to the Agency a copy of the approved tactical plan for the new fiscal year as it relates to the subject matter of this Agreement.

7. The Partnership will arrange for an annual financial audit to be conducted by an independent accounting firm, with a copy of the audit provided to the Agency. The audit will be conducted at no expense to the Agency.

8. Reports from the Partnership to the Agency shall be delivered to Eric Ushkowitz, Economic Development Administrator, Orange County, 201 S. Rosalind Avenue, 5th Floor, Orlando, Florida 32801.

9. The provisions of Paragraph 1, 5, 6, 7, and 8 of this Article shall survive termination of this Agreement, as applicable.

ARTICLE VII

NONDISCRIMINATION

The Partnership shall not discriminate in the performance of this Agreement in regard to race, color, creed, sex, age, religion, ancestry, national origin, handicap or marital status.

ARTICLE VIII

ANTI-LOBBYING CLAUSE

1. "Lobbyist" and "lobbying" are terms defined in Chapter 2, Article X Section 2-351 of the Orange County Code and apply to any governmental entity.

2. The funding paid by the Agency to the Partnership under this Agreement is

strictly for the uses and purposes outlined herein and in Exhibit "A."

3. No funds paid under this Agreement shall be expended for any lobbyist to engage in any lobbying activities designed to influence decisions of the Orange County Board of County Commissioners or the governing body of any other local governmental entity in the state of Florida.

4. The Partnership agrees that it will not undertake, or cause to be undertaken, or participate in, any lobbying before the state legislature in order to advocate for, or influence legislative decision making inconsistent with, legislative priorities adopted by the Agency without the prior written consent of the Agency.

ARTICLE IX

OTHER CONDITIONS

1. In performing services under this Agreement, the Agency grants the Partnership permission to use Agency logos, the Agency name, and other Agency identifiers to promote and/or recognize the Agency, with the stipulation that the Agency may at any time require the Partnership to obtain written permission from the Agency for such uses.

2. Any alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing and duly signed by both parties. The parties agree to renegotiate this Agreement if revisions of any applicable laws or regulations make changes in this Agreement necessary.

3. This Agreement contains all the terms and conditions agreed upon by the parties with regard to the subject matter stated herein.

4. The Partnership shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state and local laws and shall

comply with all fire, health and other applicable regulatory codes.

5. The Partnership agrees to comply with all reasonable rules and guidelines prescribed by the Agency for recipients of funds which are applicable to independent contractors doing business with the Agency.

6. The Partnership agrees not to cause or create a conflict of interest or any other violation of Chapter 112, Florida Statutes, relating to ethics in government.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

BY: *Teresa Jacobs*
Teresa Jacobs, Orange County Mayor
for
DATE: 11.13.18

ATTEST: Phil Diamond, CPA, Orange County Comptroller
As Clerk of the Board of County Commissioners

By: *Lahela Lewis*
for Deputy Clerk
Clerk/Deputy Clerk of the Board

Date: NOV 13 2018

ORLANDO ECONOMIC PARTERSHIP,
INC.

Tim Giuliani
Tim Giuliani, President and CEO

DATE: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 18 day of October, 2018, by Tim Giuliani, President and CEO, Orlando Economic Partnership, Inc. He is personally known to me or has produced _____ (type of identification) as identification and did/did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 18 day of October, 2018.

Notary Public, State of Florida

Printed Name: Elizabeth Chiarello

Commission No.: _____

My Commission Expires: _____

