

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 19, 2019 (X) Consent () Regular
() Workshop () Public Hearing

Department: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve a Contract for Consulting/Professional Services with Day's Edge Productions LLC (Day's Edge), a Colorado Springs, Colorado company, to produce a promotional/educational film highlighting Palm Beach County's (County) eco-assets and grant an unlimited use license for the County to reproduce, distribute, perform, display and prepare derivative works beginning November 19, 2019 and ending November 18, 2020, in an amount not to exceed \$99,855;

B) approve a Memorandum of Understanding (MOU) with Discover Palm Beach County, Inc. (DTPB), the County's official tourism and marketing organization, to receive their contribution of \$50,000 to this project;

C) authorize the County Administrator, or designee, to sign all future time extensions, task assignments, certifications, and other forms associated with the MOU that do not substantially change the terms or conditions of the MOU;

D) approve Budget Amendment of \$50,000 in the Manatee Protection Fund (1232) to recognize the revenue from DTPB; and

E) authorize the County Administrator, or designee, to sign all future time extensions, task assignments, certifications, and other forms associated with the Contract, and any necessary minor amendments that do not substantially change the scope of work, terms, or conditions of the Contract.

Summary: Day's Edge will create a promotional educational film to be used by schools in the seventh and tenth grade curriculum, marketed to broadcast on television and online, and create a catalog of video B-roll and still images for use by the County and Tourist Development Council (TDC) to promote new and restored eco-assets within the County. As copyrighted promotional/educational material, this procurement is exempt from the County's Purchasing Code section 2-51(f)(1) and Equal Business Opportunity Program per CW-O-043. Day's Edge was selected in good faith utilizing a competitive bid process conducted by DTPB. The cost share is 50% DTPB as agreed upon in the MOU and 50% from the County's Manatee Protection Fund (1232).
Countywide (SS)

Background and Justification Continued on Page 3

Attachments:

1. Day's Edge Contract
2. DTPB Memorandum of Understanding
3. Budget Amendment (1232)

Recommended by: [Signature] 10-31-19
Department Director Date
Approved by: [Signature] 11/13/19
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$99,855</u>	_____	_____	_____	_____
External Revenues	<u>(\$50,000)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$49,855</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No <u>X</u>		
Does this item include the use of federal funds?	Yes _____		No <u>X</u>		


Budget Account No.:

Revenue: Fund 1232 Department 380 Unit 3252 Object 4399 \$50,000
 Expense: Fund 1232 Department 380 Unit 3252 Object 3401 \$99,855

B. Recommended Sources of Funds/Summary of Fiscal Impact:

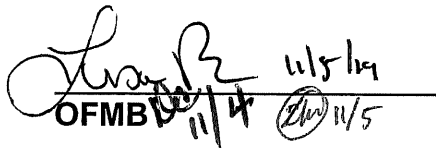
Manatee Protection Fund – Outreach (1232) \$49,855
 Discover Palm Beach County, Inc. \$50,000

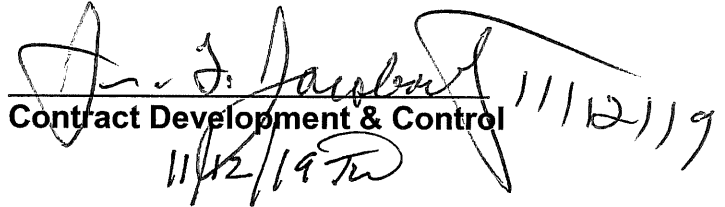
C. Department Fiscal Review:



III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:


 OFMB 11/4 11/5


 Contract Development & Control 11/12/19

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

Continued from Page 1

Background and Justification: On August 21, 2007, the Board of County Commissioners adopted the Manatee Protection Plan which establishes an initiative for an education and awareness program within the public school system. Additionally, the County and its TDC agencies need new, high quality video and photo collateral that represents the current state of new and restored eco-assets within the County. The current teaching tool provided by Environmental Resources Management to the School District is print-based and outdated, and is being replaced with this film. The film will be used in multiple ways across multiple platforms to both promote the County as an ecotourism destination and also to inspire a connection with School District students to our local environment. Additionally, Day's Edge will create an extensive catalog of new, high quality video B-roll and still images of eco-assets within the County, which will be used by both the County and the TDC agencies to promote ecotourism. DTPB has committed to contribute \$50,000 to this project.

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the _____ day of _____, 2019, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and DAY'S EDGE PRODUCTIONS LLC, a film production company authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 45-5362863.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of Media Production, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The CONSULTANT shall retain the copyright (ownership) in all photographs or video authored by the CONSULTANT under this Contract (hereafter referred to as the "Work"; defined more specifically in Exhibit A, "Scope of Work"). The CONSULTANT hereby grants to the COUNTY a perpetual, worldwide, unlimited, fully-paid up license to reproduce, distribute, perform, display, and prepare derivative works based upon the Work. Notwithstanding the foregoing, the CONSULTANT agrees that it shall not exercise its rights to use, perform, execute, copy, make derivative works of, distribute, sell, license or otherwise transfer the Work until December 31, 2020, unless specifically authorized in advance and in writing by COUNTY. For purposes of clarity, the CONSULTANT acknowledges that this "embargo" is a critical component of the agreement reached by the parties. As such, the CONSULTANT agrees that in the event of any breach or threatened breach by the Artist of this embargo provision, the COUNTY may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect the COUNTY against any such breach or threatened breach.

The COUNTY'S representative/liaison during the performance of this Contract shall be Laura Thompson, telephone no. 561-233-2423.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Neil Losin, telephone no. 703-459-7159.

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on November 19th, 2019 and complete all services by November 18th, 2020.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "B".

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of Ninety Nine Thousand Eight Hundred and Fifty Five Dollars

(\$99,855.00). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY based on deliverables, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.
- D. In order to do business with Palm Beach County, CONSULTANTS are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONSULTANT intends to use sub-consultants, CONSULTANT must also ensure that all sub-consultants are registered as consultants in VSS. All subcontractor agreements must include a contractual provision requiring that the sub-consultant register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONSULTANT and all of its sub-consultants are registered in VSS.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business days written notice to the CONSULTANT or without cause upon ten (10) business days written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered

to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein under shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors), while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 10 - INSURANCE

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the term of this Contract, insurance coverage and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverage. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract. Where not prohibited by the policy, coverage and endorsements shall apply on a primary and/ or non-contributory basis.
- B. Commercial General Liability CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department.
- C. Business Automobile Liability CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Accident.
- D. Workers' Compensation Insurance & Employer's Liability CONSULTANT shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.
- E. Additional Insured CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents."
- F. Waiver of Subrogation CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT

shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

- G. Certificate(s) of Insurance Prior to execution of this Contract, within forty-eight (48) hours of a request by COUNTY and upon expiration CONSULTANT shall deliver to the COUNTY'S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Contract have been obtained and are in full force and effect. The certificate of insurance shall be issued to:

Palm Beach County ERM
 c/o Laura Thompson
2300 N Jog Road, 4th Floor
West Palm Beach, FL 33411

- H. Umbrella or Excess Liability If necessary, CONSULTANT may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- I. Right to Review COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverage, or endorsements.

ARTICLE 11 - INDEMNIFICATION

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County,

Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

ARTICLE 14 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its 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 CONSULTANT under the terms of this Contract.

ARTICLE 15 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - ARREARS

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or

surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 20 - ACCESS AND AUDITS

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least four (4) years after completion or termination of this Contract. The COUNTY 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 CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21 - NONDISCRIMINATION

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONSULTANT warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

As a condition of entering into this Contract, the CONSULTANT represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONSULTANT retaliate against any person for reporting instances of such discrimination. The CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The CONSULTANT understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT shall include this language in its subcontracts.

ARTICLE 22 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all

licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

ARTICLE 26 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Laura Thompson
Palm Beach County ERM
2300 N Jog Road, 4th Floor
West Palm Beach, FL 33411

With copy to:

Palm Beach County Attorney's Office
301 North Olive Ave.
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Neil Losin
6611 SW 63rd Ave
South Miami, FL 33143

ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK

The CONSULTANT, CONSULTANT'S employees, subcontractors of CONSULTANT and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2003-1274, as amended. The CONSULTANT is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONSULTANT acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and Resolution R2003-1274, as amended. COUNTY staff representing the COUNTY department will contact the CONSULTANT(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONSULTANT shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the CONSULTANT or its subcontractor(s) terminates an employee who has been issued a badge, the CONSULTANT must notify the COUNTY within two (2) hours. At the time of termination, the CONSULTANT shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONSULTANT if the CONSULTANT 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONSULTANT employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 30 - SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

ARTICLE 31 - PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Consultant: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Consultant shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Consultant is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Contract.
- B. 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 in Chapter 119 or as otherwise provided by law. The Consultant further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Consultant does not transfer the records to the public agency.
- D. Upon completion of the Contract the Consultant shall transfer, at no cost to the County, all public records in possession of the Consultant unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of the Contract, the Consultant shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically by the Consultant must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Consultant to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Consultant acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Mayor

WITNESS:

CONSULTANT:

Signature

Day's Edge Productions LLC
Company Name

Name (type or print)

Neil Losin
Signature

Signature

Neil Losin
Typed Name

Name (type or print)

Co-owner / Producer
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(corp. seal)

By _____
Scott Stone, Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By Deborah Drum
Deborah Drum,
Department Director

EXHIBIT "A"

SCOPE OF WORK

CONSULTANT shall have the responsibility to perform the following services in collaboration with COUNTY. Listed below are key "Scope of Work" components which COUNTY considers important for this film.

1. Following an expedition team composed of an accomplished conservation photographer who is accompanied by two/three young explorers (10th grade – candidates to be selected by CONSULTANT with input from COUNTY), the film team will document their multi-day journey through approximately 70 miles of connected wilderness, traveling by foot, bicycle and paddlecraft over the course of approximately one week. The film will introduce the characters and set the scene with their current home life, and document their authentic reactions and emotions through a wilderness immersion while experiencing The Palm Beaches as they never have before. The expedition will introduce them to important eco-assets including connected trail systems, Natural Areas, the Wild & Scenic Loxahatchee River, Lake Worth Lagoon, and other stunning native landscapes. Explorers will encounter charismatic wildlife (wading birds, alligators, manatees and sea turtles) and discover what makes them special along the way. The expedition will stop each day at different eco-assets throughout the route.
2. Produce a film that can be viewed as a continuous half-hour program, as well as three shorter stand-alone segments, not to exceed 10 minutes per segment (for classroom use in 7th and 10th grade curriculum in PBC School District schools and as shorter tourism-focused pieces). Specifically, CONSULTANT shall ensure that the film comply with all broadcast requirements of PBS and the Palm Beaches TV to aid in solicitation of distribution upon completion of production. Both the half-hour program and three shorter segments will be subject to two rounds of review by COUNTY prior to delivery of final program masters and project files. The films should be complimented with approved music to enhance viewer experience. Production of these films includes a perpetual unlimited use license (does not include copyright or right to sell) for COUNTY and PBC tourism agencies on all B-roll and stills collected during filming.
3. Create an extensive catalog of new, engaging eco-collateral for use by COUNTY and Palm Beach County Tourist Development Council agencies to produce tourism assets, short films, advertisements, web and social media content, etc. Content shall include:
 - a. Eco-asset B-roll from all along the expedition route
 - b. Wildlife action B-roll
 - c. Underwater footage of participants and wildlife along entire route
 - d. Drone footage along entire route
 - e. Still images (from conservation photographer/expedition leader and film crew) of participants, landscapes and wildlife
 - f. Perpetual unlimited use license (does not include copyright or right to sell) for COUNTY and PBC tourism agencies on all B-roll and stills collected during filming.

4. CONSULTANT shall utilize existing industry relationships and work with COUNTY and PBC tourism agencies to maximize distribution of the film through multiple distribution outlets. Targeted distribution will include:
 - a. Public television broadcast: through PBS South Florida (WPBT2) and other PBS affiliates, as well as The Palm Beaches TV and PBC Channel 20
 - b. Brand partnerships: CONSULTANT shall work to finalize agreements with REI, Goal Zero, NRS and Pelican (as well as any other relevant partnerships that become available) to support the film project and distribute the short films created through the brands' existing online presence and social media channels.
 - c. Film Festivals: CONSULTANT shall pursue recognition and inclusion of the films produced into appropriate film festivals to maximize distribution (such as Mountainfilm, Banff Mountain Film Festival, Wild & Scenic Film Festival, Adventure Film Festival, Lookout Wild Film Festival, New York WILD Film Festival, DC Environmental Film Festival, American Conservation Film Festival, Jackson Hole Wildlife Film Festival, International Wildlife Film Festival, Science Media Awards, etc.).
 - d. Web Magazines: approach outlets such as bioGraphic, Outside, Nautilus, Hakai, etc. to distribute short films on their online platforms.

EXHIBIT "B"

SCHEDULE OF PAYMENTS

The Scope of Work to be completed by CONSULTANT as defined in Exhibit "A" consists of specific completion phases which shall be clearly identified on a phase-by-phase basis upon submission to the COUNTY of certain "deliverables"* as expressly indicated below. Compensation for the work tasks stated herein shall be in accordance with the following Schedule of Payments:

PHASE 1

Task(s) to be Completed: Expedition plan and film treatment (storyboard)

Completion Time: December 31, 2019

Compensation for Phase 1: \$ 40,000

Deliverable(s) Required: Complete expedition plan and film treatment including expedition route and experiences as well as expedition lead casting.

PHASE 2

Task(s) to be Completed: Deliver all expedition B-roll and stills

Completion Time: March 31, 2020

Compensation for Phase 2: \$ 30,000

Deliverable(s) Required:

- a. Eco-asset B-roll from all along the expedition route
- b. Wildlife action B-roll
- c. Underwater footage of participants and wildlife along entire route
- d. Drone footage along entire route
- e. Still images (from conservation photographer/expedition leader and film crew) of participants, landscapes and wildlife

PHASE 3

Task(s) to be Completed:

- a. Rough cut delivered to COUNTY (COUNTY to provide review/comment within 30 days)
- b. Fine cut delivered to COUNTY incorporating revisions based on COUNTY comments to rough cut (COUNTY to provide review/comment within 30 days)
- c. Broadcast ready 30-minute documentary and three short (10 minutes or less) stand-alone segments, subject to COUNTY approval.

Completion Time: October 1, 2020

Compensation for Phase 3: \$29,855

Deliverable(s) Required: Final program masters and project files delivered to PBC for 30-minute documentary and three short stand-alone segments to be delivered upon or after written final approval by COUNTY.

* "Deliverables" shall be defined as progress reports, prepared maps, bid documents, completed drawings, specific reports, work plans, documentation of meetings attended, assessment study reports, analysis reports, summary reports, recommendation reports and related draft reports and verifiable deliverables.



**Memorandum of Understanding (MOU)
between Discover Palm Beach County Inc.
and Palm Beach County for reimbursement of funds
for The Palm Beaches Discovered Program/Video Production**

This Memorandum of Understanding is made as of the ___ day of _____ 2019 by and between Discover Palm Beach County, Inc. referred to as the DTPB, and Palm Beach County, a political subdivision of the State of Florida, referred to as County. In consideration of the mutual promises contained herein, DTPB and the County agree as follows:

The County will contract with Day's Edge Productions, LLC to produce video content consisting of secure valuable digital media (video B-roll and stills) that will be utilized to market The Palm Beaches as an eco-tourism destination.

DTPB's interest in the project will be limited to reimbursing a portion of the costs in exchange for perpetual unlimited use (does not include copyright or right to sell) of all B-roll and stills collected during filming.

I. SCOPE OF WORK

In consultation with the DTPB, the County will create and produce a film that can be viewed as a continuous half-hour program (for distribution thru The Palm Beaches TV, PBS, etc.), as well as three shorter stand-alone segments, not to exceed 10 minutes per segment (for classroom use in 7th and 10th grade curriculum in PBC School District schools and as shorter tourism-focused pieces).

As a result of this production, there will be an extensive catalog of new, engaging eco-collateral for use by the County and DTPB to produce tourism assets, short films, advertisements, web and social media content, etc.

II. PARTY'S REPRESENTATIVES/LIAISON

- a. The County's representative during the performance of this MOU shall be Benjamin Studt, ERM Project Manager, telephone number 561-681-3885, email address BStudt@pbcgov.org or successor.
- b. DTPB's representative during the performance of this MOU shall be Jorge Pesquera, DTPB's CEO, telephone number 561-233-3010, email address JPesquera@ThePalmBeaches.com or successor.

III. SERVICES

The County represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Memorandum of Understanding. Through a contract with Day's Edge Productions, LLC, services include pre-production, physical production, post-production and final delivery of the program as well as pursuit of distribution through established channels such as public television broadcast, brand partnership, and various online and print media.

IV. SCHEDULE

The County will begin this project in November 2019. Below is the anticipated project timeline.

- a. Complete, countersigned production agreement (contract) – November 19, 2019
- b. Expedition plan and film treatment (storyboard) delivered to PBC – December 31, 2019
- c. Expedition completed; raw footage delivered to PBC – March 31, 2020
- d. Final program masters and project files delivered to PBC – October 1, 2020

V. DELIVERABLES

The County will deliver the following to the DTPB:

- a. Expedition plan and film treatment (storyboard) – January 31, 2020
- b. Delivery of Final Film Assets – October 31, 2020 to include:
 - i. Eco-asset B-roll from all along the expedition route
 - ii. Wildlife action B-roll
 - iii. Underwater footage of participants and wildlife along entire route
 - iv. Drone footage along entire route
 - v. Still images (from conservation photographer/expedition leader and film crew) of participants, landscapes and wildlife
 - vi. Broadcast ready 30-minute documentary and three short (10 minutes or less) stand-alone segments

VI. PAYMENT

DTPB shall pay the County a total of \$50,000 as follows:

- a. \$25,000 upon delivery of expedition plan and film treatment (storyboard)
- b. \$25,000 upon final delivery of Final Film Assets to County

An invoice must be submitted by the County for payment to be processed. Invoice must include a list of deliverables/services rendered. Allow net thirty (30) days for payment.

VII. RIGHTS

The County acknowledges and agrees that DTPB shall have full right to the perpetual use of the video, B-roll, and stills content, including distributing, and exhibiting, in any and all media.

VIII. REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or DTPB.

IX. NONDISCRIMINATION

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, DTPB warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

As a condition of entering into this Contract, DTPB represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, DTPB shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression,

disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall DTPB retaliate against any person for reporting instances of such discrimination. DTPB shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. DTPB understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. DTPB shall include this language in its subcontracts.

X. ACCESS AND AUDITS

DTPB shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least four (4) years after completion or termination of this Contract. The COUNTY 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 DTPB's place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of DTPB, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this MOU on behalf of the COUNTY and DTPB has hereunto set its hand the day and year above written.

ATTEST:

SHARON R. BOCK
CLERK AND COMPTROLLER

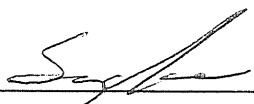
PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Mayor

WITNESS:

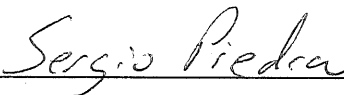
DISCOVER PALM BEACH COUNTY, INC:



Signature



Signature



Name (Type or Print)

Jorge Pesquera

Typed Name

Chief Executive Officer

Title

(corp. seal)

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET AMENDMENT

Fund 1232 Manatee Protection

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED As of 09/10/2019	REMAINING BALANCE
REVENUES								
380-3252 Manatee Protection Program	4399 Other Physical Environment Rev	0	0	50,000	0	50,000		
Total Receipts and Balances		5,164,906	5,164,906	50,000	0	5,214,906		
EXPENDITURES								
380-3252 Manatee Protection Program	3401 Other Contractual Services	399,829	1,588,396	50,000	0	1,638,396	100,000	1,538,396
Total Appropriations & Expenditures		5,164,906	5,164,906	50,000	0	5,214,906		

ATTACHMENT 3

Environmental Resources Management
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Signatures & Dates

Joseph G. ... 10-31-19

By Board of County Commissioners
At Meeting of
November 19, 2019

Deputy Clerk to the

Board of County Commissioners