



MEMORANDUM

AGENDA ITEM III.G

DATE: JUNE 3, 2013
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: ICC/SFRPC AGREEMENT FOR PROFESSIONAL SERVICES

Background

The Institute for Community Collaboration, Inc. ("ICC") was created in 2002 by the South Florida Regional Planning Council ("SFRPC"), as a Florida not for profit corporation with 501(c)(3) status as a charitable organization. The SFRPC created the ICC in order to establish a corporate entity that could obtain 501(c)(3) status and apply for grants and funding as a not for profit, charitable organization. In many instances grants are only available to 501(c)(3) organizations. As a result, the ICC could apply for grants and obtain funds in lieu of the SFRPC, which as a governmental entity is not eligible for such funding.

The intent in creating the ICC was that the ICC could then use the funds obtained through grants and donations to assist the SFRPC in mediating disputes affecting regional issues and bringing stakeholders together to collaborate on regional issues within the South Florida area. In addition, the ICC could partner with the SFRPC to provide programs and services that would assist in addressing regional economic and planning issues in the South Florida area. The goal was that the ICC would contract with the SFRPC for services that would be required to support the ICC programs and services.

Proposed Agreement for Professional Services between the SFRPC and the ICC

In order to provide a mechanism whereby the ICC will be able to compensate the SFRPC for services provided in support of the ICC's programs, it is necessary that the parties enter into an Agreement which delineates the parties' respective responsibilities. The attached Agreement for Professional Services ("Agreement") provides for the establishment of a contractual relationship that will permit the ICC and the SFRPC to collaborate on current and future programs. The Agreement requires that the parties enter into amendments in order for the SFRPC to provide services to the ICC in support of an ICC program. The amendment will provide a Scope of Services and a budget/fee schedule which will allow for the ICC to compensate the SFRPC for services provided in support of the ICC's programs.

One issue which needs to be addressed by the Council is whether, under the Agreement, the Council and the ICC will need to approve amendments to the agreement. As you are aware, the Council and the ICC Board are one and the same. Therefore, it may be viewed as being redundant to have the same board approve the amendment twice. In addition, the ICC currently only meets on a quarterly basis. Therefore the ability to timely approve amendments may be an issue for the ICC. In order to address this issue, the

ICC may wish to adopt a policy that would simply authorize the ICC's Executive Director to approve an amendment to the agreement following approval by the Council. The ICC Board may desire instead to adopt a policy to establish under what conditions the ICC Executive Director could approve an amendment to the Agreement. The specifics of that ICC policy would need to be discussed and approved by the ICC Board.

Recommendation

At this time, the SFRPC staff would recommend that the Council approve the Contract for Services between the SFRPC and the ICC. By separate action at the ICC meeting, the staff will request that the ICC Board take the same action.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this ___ day of _____, 2013, by and between INSTITUTE FOR COMMUNITY COLLABORATION, INC., a not-for-profit Florida corporation, whose address is 3440 Hollywood Boulevard, Suite 140, Hollywood, Florida 33021, hereinafter referred to as "ICC" and the SOUTH FLORIDA REGIONAL PLANNING COUNCIL, a body corporate and politic and an agency of the State of Florida, (hereinafter referred to as the "SFRPC").

WHEREAS, the ICC did determine that the SFRPC is fully qualified to render the services contracted.

WITNESSETH:

ARTICLE 1.00: Scope of Services. The ICC does hereby retain SFRPC to furnish certain professional services in connection with various grants or projects, hereinafter referred to as "Scope of Services". Specific Scope of Services for grants or projects shall be agreed to by the parties through the execution of a written amendment to this Agreement.

ARTICLE 2.00: Responsibilities. The ICC and SFRPC mutually agree to furnish, each to the other, the respective services, information and items as described in any Scope of Services. The ICC agrees to furnish SFRPC and its duly designated representatives' information including, but not limited to, existing data and projects related to the Scope of Services which may be available in other governmental offices. SFRPC agrees to perform, in a timely and professional manner, the work elements set forth in Scope of Services which shall be provided in any amendment to this Agreement.

ARTICLE 3.00: Commencement of Services. The services to be rendered by SFRPC shall be commenced subsequent to the execution of this Agreement.

ARTICLE 4.00: Project Schedule. SFRPC agrees to provide Project Schedule progress reports in a format acceptable to the ICC Executive Director and at intervals established by the ICC Executive Director. The ICC Executive Director shall be entitled at all times to be advised, upon request, as to the status of work being done by SFRPC and of the details thereof. Coordination shall be maintained by SFRPC with representatives of the ICC. Either parties to the agreement may request and be granted a conference with the other party to discuss the Project Schedule, or other matter related to the parties' performance pursuant to this Agreement.

ARTICLE 5.00: Delays. In the event there are delays on the part of the ICC as to the approval of any of the materials submitted by SFRPC, or if there are delays occasioned by circumstances beyond the control of SFRPC which delay the Project Schedule completion date, the ICC Executive Director or his/her designee may grant the SFRPC, through the execution of an amendment to this agreement, an extension of the contract time, equal to the aforementioned delays, provided there are no changes in compensation or scope of work.

It shall be the responsibility of SFRPC to ensure at all times that sufficient contract time remains within which to complete services on the project as designated in the Scope of Services. In the event there have been delays which would affect the project completion date or the completion date of any Task Deliverable, as provided in Exhibit "A", SFRPC shall submit a written request to the ICC Executive Director or his/her designee **twenty (20) calendar days** prior to the schedule completion date which identifies the reason(s) for the delay and the amount of time related to each reason. The ICC Executive Director or his/her designee will review the request and make a determination as to granting all or part of the requested extension. Scheduled completion dates shall be determined by the elapsed times shown in the Scope of Services.

In the event contract time expires and *SFRPC* has not requested, or if the ICC Executive Director or his/her designee has denied an extension of the completion date, partial progress payments will be stopped on the date time expires. No further payment for the project will be made until a time extension is granted or all work has been completed and accepted by the ICC Executive Director or his/her designee.

ARTICLE 6.00: SFRPC Responsibilities. *SFRPC* shall maintain an adequate and competent professional staff and may associate with it, for the purpose of its services hereunder, without additional cost to the ICC, other than those costs negotiated within the limits and terms of this Agreement and upon approval by the ICC Executive Director, such specialists as *SFRPC* may consider necessary. *SFRPC*, however, shall not sublet, assign or transfer any work under this Agreement to firms, other cities, or individuals other than those listed in the staffing plan without the written consent of the ICC Executive Director or his/her designee.

ARTICLE 7.00: Limitation of Liability. *SFRPC* shall not be liable for use by the ICC of plans, documents, studies or other data for any purpose other than intended by the terms of this Agreement.

ARTICLE 8.00: Ownership of Materials and Records. All tracings, plans, specifications, maps, and/or reports prepared or obtained under this Agreement shall be considered *research* and shall become the property of the ICC without restriction or limitation on their use; and shall be made available, upon request, to the ICC at any time. Copies of these documents and records shall be furnished to the ICC upon request, verbal or written, allowing reasonable time for the production of such copies.

SUB-ARTICLE 8.10: Records of costs incurred include *SFRPC*'s general accounting records and the project records, together with supporting documents and records, of *SFRPC* and all subconsultants performing work on the project, and all other

necessary records of SFRPC and subconsultants considered necessary by the ICC for proper audit of project costs shall be furnished to the ICC upon request.

Whenever travel costs are included in the performance of services, the provisions of *Florida Statutes* shall govern.

SFRPC shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by SFRPC in conjunction with this Agreement. Failure by SFRPC to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the ICC Executive Director.

ARTICLE 9.00: Compliance with Laws. SFRPC shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance or work under this contract.

ARTICLE 10.00: Compensation. The ICC shall compensate the SFRPC for the services to be performed by SFRPC as provided in the Scope of Services, which shall be attached to any amendment to this Agreement.

ARTICLE 11.00: Termination. The ICC Executive Director may terminate this Agreement in whole or in part at any time if the interest of the ICC requires such termination.

SUB-ARTICLE 11.10: If the ICC Executive Director determines that the performance of SFRPC is not satisfactory, the ICC Executive Director shall have the option of (a) immediately terminating the Agreement or (b) notifying SFRPC of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time.

SUB-ARTICLE 11.20: If the ICC Executive Director requires termination of the Agreement for reasons other than unsatisfactory performance of SFRPC, the ICC Executive Director shall notify SFRPC of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

SUB-ARTICLE 11.30: If the Agreement is terminated before performance is completed, SFRPC shall be paid for the work satisfactorily performed up through the date of termination. Payment is not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is of the total work called for in the contract. Such determination shall be based and calculated upon a percentage allocation of total project cost, by major Task Group.

ARTICLE 12.00: Interpretation. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

ARTICLE 13.00: No Solicitation. SFRPC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SFRPC, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

SUB-ARTICLE 13.10: For the breach or violation of Article 13.00, the ICC Executive Director shall have the right to terminate this Agreement without liability, and, at its

discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 14.00: Press Releases. SFRPC agrees that it shall make no statements, press releases or publicity releases concerning this Agreement, or its subject matter, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying the ICC Executive Director or his designee and securing its consent. SFRPC also agrees that it shall not copyright or patent any of the data and/or information furnished in compliance with this Agreement, it being understood that, under Article 8.00 hereof, such data or information is the property of the ICC. This Section shall not be construed to limit or restrict public access to documents, papers, letters or other material pursuant to Article 8.10 of this Agreement.

ARTICLE 15.00: Expenditures by ICC. The ICC shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money shall be paid on such contract.

ARTICLE 16.00: Standards of Conduct - Conflict of Interest. SFRPC covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Agreement, which standards will be reference be made a part of this Agreement as though set forth in full. SFRPC agrees to incorporate the provisions of this article in any subcontract into which it might enter with reference to the work performed.

ARTICLE 17.00: Termination by ICC. The ICC Executive Director reserves the right to cancel and terminate this Agreement in the event the SFRPC or any employee, servant,

and agent of SFRPC is indicted or has direct information issued against him for any crime arising out of or in conjunction with any work being performed by SFRPC for or on behalf of the ICC, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans, specifications, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the ICC Executive Director in conformity with the provisions of Article 8.00 hereof. SFRPC shall be compensated for its services rendered up to the time of any such termination in accordance with Article 11.00 hereof.

ARTICLE 18.00: Indemnification. To the extent permitted by law, and subject to the limitations included within Florida Statutes Section 768.28, SFRPC shall indemnify and save harmless the ICC from any and all claims, liability, losses and causes of action arising out of SFRPC's negligence or other wrongful acts in the performance of this agreement. However, nothing herein shall be deemed to indemnify the ICC for any liability or claims arising out of the negligence, performance, or lack of performance of the ICC. In addition, nothing herein shall serve as a waiver of the SFRPC's entitlement to sovereign immunity, or the protections of Section 768.28, Fla. Stat.

ARTICLE 19.00: Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

ARTICLE 20.00: Amendments. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto.

ARTICLE 21.00: Venue. Venue for any litigation filed to enforce any provision or right under this Agreement shall be filed in the appropriate state court in Broward County, Florida.

ARTICLE 22.00: Attorney's Fees. In the event it becomes necessary for either party herein to seek legal means to enforce the terms of the Agreement, the prevailing party shall be entitled to its reasonable attorney fees and court costs and paralegal fees at both the trial and appellate levels, to the extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed these presents this _____ day of _____, 2013.

INSTITUTE FOR COMMUNITY COLLABORATION, INC.

By: _____

Print Name: _____

Title: _____

South Florida Regional Planning Council

By: _____

Print Name: _____

Title: _____

Approved as to Legal Form:

Samuel S. Goren, General Counsel