

PROFESSIONAL SERVICE AGREEMENT BETWEEN

COLIN BAENZIGER & ASSOCIATES AND

LEE COUNTY

THIS AGREEMENT is made this 11th day of June, 2009, by and between Lee County, a Florida Municipal Corporation, whose address is Lee County, 2115 Second Street, Fort Myers, FL 33901 (the "County"), and Colin Baenziger & Associates, a sole proprietorship doing business in the State of Florida and maintaining an office in Florida at 12970 Dartford Trail #8, Wellington, FL 33414 (the "Consultant").

IN CONSIDERATION of Ten and 00/100 Dollars (\$10.00), the mutual covenants and provisions hereof, and other diverse, good, and valuable considerations, the receipt and sufficiency all of which is hereby acknowledged, the parties desiring to be legally bound do agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

1.1 Wherever used in any of the Contract Documents, the meaning shall be given to the terms herein defined: The term "Agreement" or "Contract" shall be used interchangeably and shall refer to the Contract Documents.

The term "County" means Lee County, a Florida Municipal Corporation, its elected officials, agents and employees.

The term "Consultant" means Colin Baenziger & Associates, a sole proprietorship, its consulting principal, Colin Baenziger, and its officers, agents and employees.

The term "Contract Documents" includes this Agreement, change orders, and insurance policies called for herein.

The term "day" as used herein shall mean a calendar day, unless the context specifically indicates to the contrary.

The "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not be effective against any party until said date.

A "Public Record" is as described in Section 119.011(1), Florida Statutes.

A "Subconsultant" is a person or entity who has a direct contract with the Consultant to

perform any portion of the Work.

"Work" shall include the performance of professional consultation services in the area of County Manager Recruitment, as more specifically described in Article 2 of this Agreement.

1.2 The Consultant shall perform the Work outlined in this Agreement for the stated fee arrangement. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement. The Consultant's response are herein incorporated by reference and shall govern the process.

1.3 The Consultant acknowledges that it has investigated prior to execution of this Agreement and satisfied itself as to the conditions affecting the Work, including but not restricted to the availability of materials and labor, the cost thereof, the requirements to obtain necessary insurance, and the steps necessary to complete the Work within the time set forth herein. The Consultant warrants unto the County that it has the competence and abilities to carefully and faithfully complete the Work within the time set forth above. The Consultant will perform its services with due and reasonable diligence consistent with sound professional practices.

ARTICLE 2 DESCRIPTION OF WORK TO BE PERFORMED

2.1 The County retains the services of Colin Baenziger & Associates, which has been found to possess executive recruitment experience for City government positions. The Consultant has considerable knowledge with regard to conducting a City government executive recruitment, which includes the ability to recruit a diverse group of applicants. The Consultant shall conduct an effective, prompt, and broad recruitment. The Consultant shall provide applicable services consisting of, but not limited to, the following tasks:

2.2 Phases and Tasks. The following describes the phases of the project and the tasks to be performed as part of this Work. A more detailed description is found in the Consultant's RFP response and that shall govern the Work. It is incorporated by reference herein.

Phase I: Recruiting

Task 1. Work with County Commission and staff to develop characteristics and attributes of the successful candidate, appropriate and necessary selection criteria, selection process, and timeline, representing a proposed initial path for selection of a County Manager. Incorporate the preceding into the recruitment profile.

Task 2. Recruit candidates.

Phase II: Screening

Task 3. Screen candidates and develop a list of Semi-Finalists

Task 4. Present the Semi-Finalists credentials to the County Commission and select finalists.

Task 5. Notify the candidates selected for interview and those who are not.

Phase III: Interview Process Coordination & County Manager Selection

Task 6. Coordinate the interview process.

Task 7. Debrief the County's elected officials and coordinate the County Manager selection.

Phase IV: Negotiation, Warranty and Continuing Assistance

Task 8. Assist in the Contract negotiations with the selected candidate

Task 9. On-going assistance.

**ARTICLE 3
PAYMENTS**

3.1 Payment for Services.

(a) Invoices will be submitted by the Consultant to the County upon completion of each phase except Phase IV where payment will be due upon the successful candidate executing a contract. The amounts of said payment shall be as specified in Section 3.4. Payment of each such invoice will be due within the time limits provided in the Florida Prompt Payment Act, Section 218.70 et seq., Florida Statutes. A service charge of one percent (1%) will be added to delinquent accounts for each month of delinquency. The County shall review the application within ten (10) days after receipt and approve the same for all Work properly and timely performed, or object to the Work performed, specifying to the Consultant the basis for the objection. Without limiting the events for nonpayment, payments may be withheld on account of: (1) defective Work not remedied or Work of inferior quality; (2) billing for a task or cost item not contracted for by the County; (3) failure of the Consultant to complete an obligation under the Contract Documents; (4) Work claimed to have been completed, but which Work has not been properly completed; or (5) Work not completed in a timely manner and for which an extension of time has not been approved by the County. The County shall state in writing the reason for rejecting, in whole or in part, a claim or application for a Certificate of Payment. Pursuant to the time limits in the Florida Prompt Payment Act, the County shall timely pay the compensation due on any amount of Work not in dispute. Any payment or partial payment

withheld may be appealed to the County Commission for resolution within thirty (30) days after dispatch of the notice of withholding in part or whole of any payment.

(b) Failure on the part of the County to timely issue approval of the invoice, as set forth in this Article, shall entitle the Consultant to payment by the County in the time set forth herein of the full amount of the payment applied for, but in such event, the Consultant's right to collect a full payment, as applied for, shall not be construed to be a certification by the County of the proper performance of any Work or that such Work has been completed.

(c) If the County fails to make any payment due the Consultant for services and expenses not specifically disapproved for payment by the County Attorney within forty-five (45) days after the Consultant's transmittal of its invoice therefore, the Consultant may, after giving seven (7) days written notice to the County, suspend services under this Agreement until all amounts due hereunder are paid in full.

(d) In the event any invoice or any portion thereof remains unpaid for more than sixty (60) days, or such time limit as may be extended by the Florida Prompt Payment Act, following the invoice date, the Consultant may initiate legal proceedings to collect the same and recover accrued interest, in addition to all amounts due and payable.

3.2 Sales tax. To the extent that the County is exempted from payment of Florida state sales and use taxes and Federal Excise tax, the Consultant, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Consultant to suppliers for taxes on materials used to fulfill its contractual obligations with the County. The Consultant shall not use the County's exemption number in securing such materials. The Consultant shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.

3.3 Pledge of County's credit. The Consultant shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

3.4 Compensation. The County agrees to pay the Consultant for professional services a total of Twenty-Two Thousand, Five Hundred dollars (\$22,500). Work shall be divided among the Project Phases described in paragraph 2.2 above, and paid as follows:

Phase I: Recruiting	\$ 9,500
Phase II: Screening	9,500
Phase III: Interview Process Coordination and County Manager Selection	2,000
Phase IV: Negotiation, Warranty and Continuing Assistance	1,500

3.5 Additional services.

(a) Additional services may include, but not be limited to, making revisions in reports, specifications, or other documents when such revisions are inconsistent with written

approvals or instructions previously given, and are due to causes beyond the control of the Consultant. No activities that are beyond the scope of this contract will be billed unless there is a prior written agreement between the County and the Consultant.

(b) Performance of additional services, in addition to Work described in this Agreement, shall be compensated based on the following fee. Rates are as follows:

Principal	\$125/Hr.
Senior Consultant	\$100/Hr.
Consultant	\$ 75/Hr.
Research Associate	\$ 50/Hr.
Technical Typist/Administrative	\$ 30/Hr.

3.6 Items Supplied and Extra Work. If, during the progress of the study and issuance of the report, the County requests the Consultant to perform additional services other than those defined in this Agreement, payment for such Work shall be negotiated prior to commencement of the Work based on the hourly rates listed above or on a task order basis.

3.7 Defective Work. Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefore.

3.8 Failure of the Contractor to meet the timelines submitted will result in a 2.5 percent penalty of the cost of the contract for not meeting timeline.

3.9 All travel costs will be reimbursed in accordance to the County's travel policy as set forth in the Admin. Code AC-3-32.

ARTICLE 4 GENERAL CONDITIONS

4.1 Subject to a right of appeal to the County Commission, the County's Project Manager will have authority to reject Work that does not conform to the Contract Documents.

4.2 The Work of a professional nature under this Agreement shall be performed by Colin Baenziger & Associates.

4.3 The Consultant shall supervise and direct the Work, using his best skill and attention, and he shall be solely responsible for all maintenance means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Consultant shall at all times enforce strict discipline and good order among his subcontractor/employees and shall not employ on the Work anyone not skilled, or properly licensed, if required, by appropriate governmental regulatory authorities, in each task assigned. The Consultant shall be responsible to the County for the acts and omissions of his employees

and other persons performing any of the Work.

4.4 The Consultant shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work.

4.5 The Consultant agrees to the fullest extent permitted by law, to indemnify and hold harmless the County and its independent contractors, agents and employees from and against all claims, damages, losses and expenses, personal injuries (including, but not limited to, death), attorney's fees, court costs, and interest (prejudgment or otherwise), directly or indirectly arising from the negligent acts, errors, omissions, intentional or otherwise, arising out of or resulting from the Consultants performance of this professional services Agreement, failing to properly coordinate the activities of the Consultants agents, servants or employees, failing to properly train employees under the Consultant's control or direction, failing to properly hire or equip employees under the Consultant's control or direction, and failing to properly supervise employees under the Consultant's control or direction in performance of services under this Agreement. The Consultant shall not be liable to the degree or extent of damages, loss, or expenses determined to be the fault of the County.

4.6 The indemnification provided above will obligate the Consultant to defend at its own expense, or to provide for such defense, at the option of the County, of any and all claims of liability, and all suits and actions of every name and description that may be brought against the County that may result from the Work and activities under this Contract, whether the Work be performed by the Consultant or by anyone directly or indirectly employed by the Consultant. In all events, the County shall be permitted to choose competent legal counsel of its sole choice, the fees for which shall be subject to and included with the indemnification provided for herein, as long as said fees are no greater than a rate of \$150 per hour.

4.7 Project is a Private Undertaking. It is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the County and the Consultant is such that the Consultant is an independent contractor and not an agent of the County.

ARTICLE 5 SUBCONTRACTS AND ASSIGNMENT

5.1 Subcontracting. The Consultant shall have the right to subcontract portions of the Work such as background checks.

5.2 Neither the County nor the Consultant shall assign this Contract, or the responsibilities and obligations set forth in the Contract Documents. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the County and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the County and the Consultant and not for the benefit of any other party.

ARTICLE 6
MISCELLANEOUS PROVISIONS

6.1 Governing Law; Venue. The contract shall be governed by the law of the State of Florida. Venue shall be properly placed in Lee County, Florida.

6.2 Contact persons.

(a) The County shall designate individuals to act as a representative for the County under this Agreement, with the authority to transmit instructions, receive information, and make or interpret the County's decisions. The person who shall act as the representative for the County with respect to this Agreement shall be Karen Hawes, Interim County Manager. The County may from time to time designate other individuals or delete individuals with the authority to act for the County under this Agreement with the authority to transmit instructions, receive information, and make or interpret the County's decisions. All deletions or designation of individuals to serve as a representative shall be given by written notice.

(b) The Consultant's representative shall be Colin Baenziger or, if necessary, his designee under this Agreement with the authority to transmit instructions, receive information, and make or interpret the Consultant's decisions. The Consultant may from time to time designate other individuals or delete individuals with the authority to act for the Consultant under this Agreement with the authority to transmit instructions, receive information, and make or interpret the Consultant's decisions. All deletions or designation of individuals to serve as a representative shall be given by written notice.

6.3 Notices. All notices, demands, requests, instructions, approvals, and claims shall be in writing. All notices of any type hereunder shall be given by U.S. Mail or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

TO THE COUNTY:

County Attorney
Lee County
2115 Second Street
Fort Myers, FL 33901

TO THE CONSULTANT:

Colin Baenziger
12970 Dartford Trail
Suite 8
Wellington, FL 33414

Notice shall be deemed to have been given and received on the date the notice is physically received if given by hand delivery, or if notice is given by first class U.S. Mail, postage prepaid, then notice shall be deemed to have been given upon the date said notice was deposited in the U.S. Mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which notice is to be received.

6.4 Consultants' Competitive Negotiation Act Prohibition Against Contingent Fees. As required by Section 287.055(6)(a), Florida Statutes (Supp. 1994), the Consultant warrants that he 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 Agreement, and that he 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 other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the County shall have an immediate right to terminate this Agreement without liability and, at the County's discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

6.5 Amendment of Agreement. Modifications or changes in this Agreement must be in writing and executed by the parties bound to this Agreement.

6.6 If a word, sentence, or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence, or paragraph shall be severed from this Contract, and this Contract shall be read as if said illegal, unenforceable, or unconstitutional word, sentence, or paragraph did not exist.

6.7 Additional Assurances. The Consultant, for itself and its subcontractors (if any), certifies that:

(a) No principal (which includes officers, directors, or executive) or individual holding a professional license and performing Work under this Agreement is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any engineering or surveying activity by any Federal, State, or Local governmental commission, department, corporation, subdivision, or agency;

(b) No principal (which includes officers, directors, or executive), individual holding a professional license and performing Work under this Agreement, employee, or agent has employed or otherwise provided compensation to, any employee or officer of the County; and

(c) No principal (which includes officers, directors, or executive), individual holding a professional license and performing Work under this Agreement, employee, or agent has willfully offered an employee or officer of the County any pecuniary or other benefit with the

intent to influence the employee or officer's official action or judgment.

ARTICLE 7 ENFORCEMENT

7.1 Enforcement of this Agreement may be by the Consultant or the County and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The County shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any person or persons for non-enforcement. Further, this provision shall not act to pledge ad valorem taxes or to otherwise pledge the County sources to revenue.

ARTICLE 8 TERMINATION OF THE CONTACT

8.1 Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice. Further, should the County decide to terminate the Work or abandon its executive search, the County, upon giving seven (7) days written notice, reserves the right to terminate this Agreement and all Work connected with this Agreement. On termination of this Agreement for any reason, the County shall pay the Consultant, as full payment for all services performed and all expenses incurred, sums due and owing to the Consultant for payment of all Work completed to the termination date, along with reimbursable expenses as provided in this Agreement. Any payment due shall be subject to the Consultant supplying the County with detailed time sheets setting forth the task completed, by whom the task was completed, the time to complete the task, and the rate of compensation required for completion of the task. Tasks shall include individual Work items completed, e.g. - phone call made, letter prepared, etc., and note phases of Work or subphases of Work. All Work performed to date shall thereafter be made available to the County.

8.2 The Consultant hereby warrants and guarantees unto the County that it has not filed for bankruptcy or is subject to appointment of a receiver as of the Effective Date hereof. If the Consultant has filed for or files for bankruptcy, should be adjudged bankrupt, is subject to appointment of a receiver, or makes a general assignment for the benefit of creditors, or if the Consultant repeatedly or persistently refuses or fails to supply enough properly skilled workers or proper materials, or if the Consultant refuses to and fails to observe or perform any provisions of the Agreement, or persistently fails to observe or disregards the instructions of the County Attorney, or is otherwise guilty of a violation of any provision of the Contract Documents, the County, upon not less than five (5) days written notice to the Consultant, without prejudice to other remedies or rights that the County may have, may terminate the Consultant's right to proceed with the Work and take over and prosecute the same to completion. All warranties, guarantees, and requirements to make good on all Work completed or insurance shall survive the completion of the Work.

8.3 No Waiver. Failure of the County to insist upon performance within any time period, or upon a proper level or quality of performance, shall not act as a waiver of the County's right to later claim a failure to perform on the part of the Consultant.

8.4 After receipt of a termination notice and except as otherwise directed by the County, 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 documents 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.

IN WITNESS WHEREOF, this Agreement is entered into as of the day and year first written above.

WITNESSES



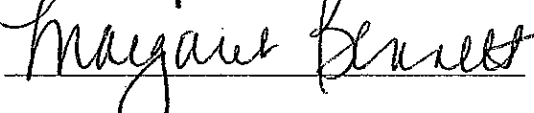
ROBERT A. SANTILLO
Print Name



Lario Figueroa
Print Name



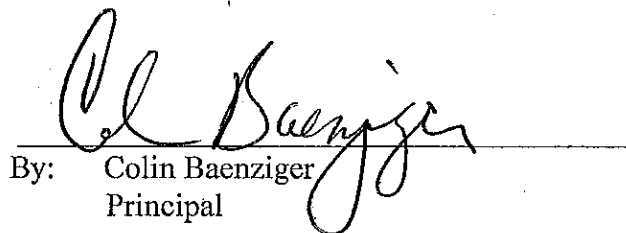
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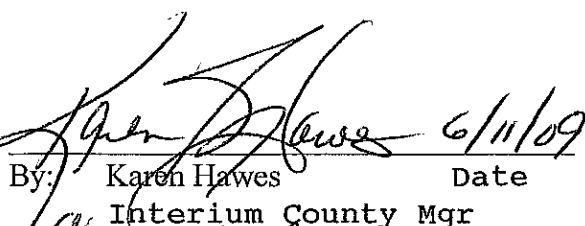
MARGARET BENNETT
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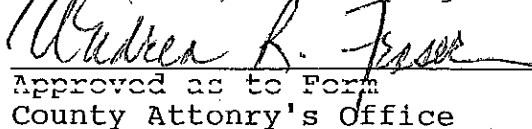
CONSULTANT:

Colin Baenziger & Associates
A Sole Proprietorship located in Florida


By: Colin Baenziger
Principal

LEE COUNTY
a Florida municipal corporation

 6/11/09
By: Karen Hawes Date
Interim County Mgr


Approved as to Form
County Attorney's Office