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**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Terminate Agreement with Stifel, Nicolaus & Co. and award RFP-600149-07/TLR – Financial Consulting Services to First Southwest Company, Orlando.

**DEPARTMENT:** Administrative Services

**DIVISION:** Purchasing and Contracts

**AUTHORIZED BY:** Frank Raymond

**CONTACT:** Tammy Roberts

**EXT:** 7115

**MOTION/RECOMMENDATION:**

Fiscal Services and Administrative Services/Purchasing and Contracts Division request that the Board terminate Agreement with Stifel, Nicolaus & Co. and award RFP-600149-07/TLR – Financial Consulting Services to First Southwest Company, Orlando.

County-wide

Ray Hooper

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**BACKGROUND:**

RFP-600149-07/TLR will provide financial advisory services relating to planning, preparing, marketing and distributing tax-exempt bond obligations, notes, certificates or other appropriate financial instruments for capital improvement programs and general financial advisory services authorized by the County.

This project was publicly advertised and three submittals received (listed in alphabetical order):

First Southwest Co, Orlando;  
The Public Financial Management, Inc., Orlando;  
Stifel, Nicolaus & Co., Winter Park.

The Evaluation Committee, which consisted of Lisa Spriggs, Fiscal Services Director; Bob Briggs, Financial Manager, Environmental Services; Steve Howard, Director, Administrative Services; Arnold Schneider, Assistant County Attorney; and Angela Singleton, Fiscal Services, evaluated the submittals. Consideration was given to the firms experience and capabilities, qualifications and experience of key personnel, methodology/approach to work and compensation.

On March 27, 2007 the Board of County Commissioners selected Stifel, Nicolaus & Co., Winter Park, for award. Based upon the primary consultant leaving Stifel, Nicolaus & Co. and joining First Southwest Co., the County has elected to terminate the Agreement. Staff recommends award of the contract to First Southwest Co. for continuity in financial consultant services.

Authorization for performance of services by the Consultant under the agreement shall be in the form of written Release Orders issued and executed by County. The Agreement shall take place on the date of execution by the County and shall run for a period of three (3) years and at the sole option of the County may be renewed for two (2) successive periods not to exceed

one (1) year each. The work and dollar amount for each Release Order will be either a "Fee per Bond" basis or Time Basis Method.

Supporting documents include termination and agreement with First Southeast Co, Orlando, as prepared by the County Attorney's Office.

**STAFF RECOMMENDATION:**

Fiscal Services and Administrative Services/Purchasing and Contracts Division request that the Board terminate Agreement with Stifel, Nicolaus & Co. and award RFP-600149-07/TLR – Financial Consulting Services to First Southwest Company, Orlando.

**ATTACHMENTS:**

1. First Amendment

<b>Additionally Reviewed By:</b> <input checked="" type="checkbox"/> County Attorney Review ( Ann Colby )
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**FINANCIAL CONSULTANT SERVICES AGREEMENT  
(RFP-600149-07/TLR)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **FIRST SOUTHWEST COMPANY**, duly authorized to conduct business in the State of Florida, whose Florida business address is 20 North Orange Avenue, Suite 1209, Orlando, Florida 32801 and whose corporate address is 325 North St. Paul Street, Suite 800, Dallas, Texas 75201, hereinafter called "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called "COUNTY".

**W I T N E S S E T H :**

**WHEREAS**, COUNTY desires to retain the services of a competent and qualified consultant to provide financial consulting services for Seminole County; and



**WHEREAS**, COUNTY has requested and received expressions of interest for the retention of services of a consultant; and

**WHEREAS**, CONSULTANT is competent and qualified to furnish consulting services to COUNTY and desires to provide its services according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and CONSULTANT agree as follows:

**SECTION 1. SERVICES.** COUNTY does hereby retain CONSULTANT to furnish services and perform those tasks as further described in the Scope of Services and Performance Work Statement attached hereto and incorporated herein as Exhibit A.

**SECTION 2. AUTHORIZATION FOR SERVICES.** Authorization for performance of professional services by CONSULTANT under this Agreement shall be in the form of written Notice to Proceed issued and executed by

COUNTY.

**SECTION 3. COMPENSATION.**

(a) COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fee Per Bond" basis or on a "Time Basis Method." The method of compensation will be specified in a Work Order, and COUNTY shall compensate CONSULTANT based on the Rate Schedule attached hereto and incorporated herein as Exhibit B.

(b) It is specifically understood and agreed that CONSULTANT shall not be obligated to assume the cost of publication of legal notices or other legal advertising expenses, the expenses of litigation, or the expense of printing bonds.

(c) COUNTY's obligation to pay CONSULTANT for services in connection with the issuance of Obligations shall vest only upon sale and delivery of the Obligations.



**SECTION 4. REIMBURSABLE EXPENSES.** Reimbursable expenses are in addition to the hourly rates set forth in Exhibit B.

(a) Reimbursable expenses for a Work Order pursuant to the Scope of Services Task II are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by CONSULTANT or its employees or professional consultants in the interest of the Project for the expenses listed in the following paragraphs:

(1) Expenses of transportation when traveling in connection with the Project, based on Sections 112.061(7) and (8), Florida Statutes, or its successor.

(2) Long distance calls and telegrams.

(3) Expense of reproductions and postage and handling of drawings and specifications.

(4) If authorized in writing in advance by COUNTY, the cost of other expenditures made by CONSULTANT in the interest of the Project.

(b) Reimbursable expenses as listed above shall be paid CONSULTANT for services under the Scope of Services Task I upon delivery of the Obligations.

**SECTION 5. PAYMENT AND BILLING.**

(a) If the Scope of Services requires work to be performed by a Work Order as defined in Task I, the Work Order shall be issued on a Fee Per Bond basis. CONSULTANT shall perform all work required by the Work Order but in no event shall CONSULTANT be paid more than the fee associated with the size of the Bond Sale.

(b) If the Scope of Services is defined as Task II, the Work Order shall be issued on a Time Basis Method and contain a "Not-to-Exceed" amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) For Work Orders issued on a Time Basis Method, CONSULTANT may invoice the amount due based on the Rate Schedule attached as Exhibit B and based on the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed.

(d) For Work Orders issued on a "Fee Per Bond" or for a bond issue, CONSULTANT may invoice the amount due based on the Rate Schedule attached as Exhibit B for services performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the amount due based on the size of the bond issue once the entire transaction has been completed and the bond funds received by COUNTY.

(e) The original invoice shall be sent to:

Director of County Finance  
Seminole County Board of County Commissioners  
Post Office Box 8080  
Sanford, FL 32772-8080

A copy of the invoice shall be sent to:

Director of Fiscal Services  
Seminole County Board of County Commissioners  
1101 East First Street  
Sanford, FL 32771

(f) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from CONSULTANT.

**SECTION 6. AUDIT OF RECORDS.**

(a) COUNTY may perform, or have performed, an audit of the records of CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONSULTANT and COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to CONSULTANT may be determined subsequent to an audit as provided for in subsection (b) and of this Section and the total compensation so determined shall be used to calculate final payment to CONSULTANT. Conduct of this audit shall not delay final payment as required by Section 4(b).

(b) CONSULTANT agrees to maintain all books, documents, papers, accounting records, and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during this Agreement period and for five (5) years from the date of final payment under this Agreement for audit or inspection as provided for in subsection (a) of this Section.

(c) In the event any audit or inspection conducted after final payment, but within the period provided in subsection (b) of this

Section, reveals any overpayment by COUNTY under the terms of this Agreement, CONSULTANT shall refund such overpayment to COUNTY within thirty (30) days of notice by COUNTY.

**SECTION 7. RESPONSIBILITY OF CONSULTANT.**

(a) CONSULTANT shall be responsible for the professional quality of services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services.

(b) Neither COUNTY's review, approval, acceptance of, nor payment for any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement; and CONSULTANT shall be and remain liable to COUNTY in accordance with applicable law for all damages to COUNTY caused by CONSULTANT's performance of any of the services furnished under this Agreement.

**SECTION 8. TERM.** This Agreement shall take effect on the date of its execution by COUNTY and shall remain in effect for three (3) years.

At the option of the parties, the Agreement may be renewed for two (2) additional one(1)-year renewals.

**SECTION 9. TERMINATION.**

(a) COUNTY may, by written notice to CONSULTANT, terminate this Agreement, in whole or in part, at any time, either for COUNTY's convenience or because of the failure of CONSULTANT to fulfill CONSULTANT's Agreement obligations. Upon receipt of such notice, CONSULTANT shall:

(1) Immediately discontinue all services affected unless the notice directs otherwise; and

(2) Deliver to COUNTY all plans, studies, reports, estimates, summaries, and such other information and materials as may

have been accumulated by CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of COUNTY, CONSULTANT shall be paid compensation for services performed to the date of termination. CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work contemplated by this Agreement.

(c) If the termination is due to the failure of CONSULTANT to fulfill its Agreement obligations, COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, CONSULTANT shall be liable to COUNTY for reasonable additional costs occasioned to COUNTY thereby. CONSULTANT shall not be liable for such additional costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of CONSULTANT. Such causes may include  but are not limited to, acts of God or of the public enemy, acts of COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without the fault or negligence of CONSULTANT.

(d) If, after notice of termination for failure to fulfill Agreement obligations, it is determined that CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

**SECTION 10. EQUAL OPPORTUNITY EMPLOYMENT.** CONSULTANT agrees that

it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 11. NO CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or persons other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any persons, company, corporation, individual  or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate this Agreement at its discretion without liability and to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 12. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith.

**SECTION 13. SUBCONSULTANTS.** In the event CONSULTANT, during the course of the work under this Agreement, requires the services of any sub-consultants or other professional associates in connection with

service covered by this Agreement, CONSULTANT must secure the prior written approval of COUNTY. If sub-consultants or other professional associates are required in connection with the services covered by this Agreement, CONSULTANT shall remain fully responsible for the services of sub-consultants or other professional associates.

**SECTION 14. INDEMNIFICATION OF COUNTY.** CONSULTANT agrees to hold harmless, replace, and indemnify COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages, or lawsuits for damages, arising from, allegedly arising from, or related to the provision of services hereunder by CONSULTANT whether caused by CONSULTANT or otherwise. This hold harmless, release, and indemnification shall include any claim based on negligence, action, or inaction of the parties.

**SECTION 15. INSURANCE.**

(a) General. CONSULTANT shall  at CONSULTANT's own cost, procure the insurance required under this Section.

(1) CONSULTANT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by CONSULTANT, CONSULTANT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous

certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement. In lieu of the statement on the Certificate, CONSULTANT shall, at the option of COUNTY, submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by COUNTY, CONSULTANT shall, within thirty (30) days after receipt of the request, provide COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.



(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by CONSULTANT shall relieve CONSULTANT of CONSULTANT's full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those

authorized by Section 440.57, Florida Statutes shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority, (ii) no longer comply with Section 440.57, Florida Statutes, or (iii) fail to maintain the requisite Best's Rating and Financial Size Category, CONSULTANT shall, as soon as CONSULTANT has knowledge of any such circumstance, immediately notify COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to COUNTY, CONSULTANT shall be deemed to be in default of this Agreement.



(c) Specifications. Without limiting any of the other obligations or liability of CONSULTANT, CONSULTANT shall, at CONSULTANT's sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in this Agreement, the insurance shall become effective prior to the commencement of work by CONSULTANT and shall be maintained in force until this Agreement's completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance without restrictive

endorsements. CONSULTANT will also be responsible for procuring proper proof of coverage from its sub-consultants of every tier for liability which is a result of a Workers' Compensation injury to the sub-consultant's employees. The minimum required limits to be provided by both CONSULTANT and its sub-consultants are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state laws.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$ 500,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$ 500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy)

shall be as follows:

LIMITS

General Aggregate	Three (3) Times the Each Occurrence Limit
Personal & Advertising Injury Limit	\$500,000.00
Each Occurrence Limit	\$500,000.00

(3) Professional Liability Insurance. CONSULTANT shall carry limits of not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

(d) Coverage. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by COUNTY or COUNTY's officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of CONSULTANT.

(e) Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability  required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must either be on an occurrence basis, or, if a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall not relieve CONSULTANT, its employees, or agents of liability from any obligation under this Section or any other portions of this Agreement.

**SECTION 16. ALTERNATIVE DISPUTE RESOLUTION.**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise

pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures", Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in COUNTY protest procedures, as set forth in subsection (a) above, of which CONSULTANT had knowledge and failed to present during COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.



**SECTION 17. REPRESENTATIVE OF COUNTY AND CONSULTANT.**

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. COUNTY, upon request by CONSULTANT, shall designate in writing and shall advise CONSULTANT in writing of one or more COUNTY employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information, and interpret and define COUNTY's policy and decisions pertinent to the work covered by this Agreement.

(b) CONSULTANT shall, at all times during the normal work week, designate or appoint one or more representatives of CONSULTANT who are authorized to act on behalf of CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and

shall keep COUNTY continually advised of such designation.

**SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are not commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

**SECTION 19. MODIFICATIONS, AMENDMENTS OR ALTERATIONS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**SECTION 20. INDEPENDENT CONSULTANT.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting CONSULTANT, including its officers, employees, and agents, as an agent, representative, or employee of COUNTY for any purpose or in any manner whatsoever. CONSULTANT is to be and shall remain an independent CONSULTANT with respect to all services performed under this Agreement.

**SECTION 21. EMPLOYEE STATUS.** Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by COUNTY.

**SECTION 22. SERVICES NOT PROVIDED FOR.** No claim for services fur-

nished by CONSULTANT not specifically provided for herein shall be honored by COUNTY.

**SECTION 23. PUBLIC RECORDS LAW.** CONSULTANT acknowledges COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

**SECTION 24. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice sent by certified United States mail, return receipt requested addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until  it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For COUNTY:**

Fiscal Services  
1101 E. First Street  
Sanford, FL 32771

**For CONSULTANT:**

First Southwest Company  
20 N. Orange Ave., Suite 1209  
Orlando, FL 32801

**SECTION 25. RIGHTS AT LAW RETAINED.** The rights and remedies of COUNTY provided for under this Agreement are in addition to any other rights and remedies provided by law.

**SECTION 26. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, CONSULTANT shall abide by all

statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to CONSULTANT.

**SECTION 27. CONFLICT OF INTEREST.**

(a) CONSULTANT agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes relating to ethics in government.

(b) CONSULTANT hereby certifies that no officer, agent, or employee of COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes as  over 5 percent) either directly or indirectly, in the business of CONSULTANT to be conducted here and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, CONSULTANT hereby agrees that monies received from COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other state or federal agency.

**(End of Agreement - Signature Page Follows)**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

FIRST SOUTHWEST COMPANY

\_\_\_\_\_, Secretary

By: \_\_\_\_\_, President

(CORPORATE SEAL)

Date: \_\_\_\_\_

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.

Approved as to form and  
legal sufficiency.



As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_,  
regular meeting.

\_\_\_\_\_  
County Attorney

Attachment:

- Exhibit A - Scope of Services
- Exhibit B - Rate Schedule

AEC/jjr  
10/29/2007  
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**Section 1 –  
Scope of Services**

The CONSULTANT shall provide financial advisory services relating to planning, preparing, marketing and distributing tax-exempt bond Obligations, notes, certificates or other appropriate financial instruments for capital improvement programs and general financial advisory services authorized by the COUNTY. Financial advisory services shall include, but are not limited to, the following:

**TASK I:**

**A. Services Relative to Financing Plan Development**

For each project or program specified by the COUNTY, the CONSULTANT will develop a plan of finance in consultation with the COUNTY, engineering consultants, bond counsel, special counsel or other consultants as authorized by the COUNTY. The plan shall be based on engineering or feasibility studies relating to the proposed projects or programs, studies pertaining to revenue projections, sensitivity analysis on revenue levels, and the existing financial and legal structure of the COUNTY.

The plan of finance may include, but may not be limited to, the following;

1. A thorough review and analysis of the existing financial resources and legal structure of the COUNTY, and a review of all relevant data pertaining to the project(s) planned by the COUNTY;
2. Recommendations as to possible changes in or additions to the existing financial resources and legal structures;
3. Review of existing debt structure and financial resources to determine available borrowing capacity and the desirability of refinancing any of the COUNTY's existing debt;
4. Recommendation of the appropriate financial structure for proposed projects;
5. Recommendations as to the need for short or intermediate term financing prior to or in conjunction with long term financing;
6. Advice on terms and features of bonds and on timing and marketing of bond issues;
7. Providing the COUNTY with assistance with the preparation of cash flow forecasts for proposed issues addressing debt service requirements and sources of funding; and
8. Performance of other related services as required as relates to development of a financing plan.

## **B. Services Relative to Primary Debt Obligations**

In addition, the CONSULTANT shall provide the following services in conjunction with the issuance of debt Obligations:

1. Evaluate and/or recommend a financial structure;
2. Prepare and update schedules (timetables) for each bond issuance and distribute to the working group;
3. Prepare or assist in the preparation of preliminary and final official statements;
4. Develop and assist in rating agency presentations;
5. Assist counsel in preparation of trust indentures, bond resolutions, loan agreements or similar documents;
6. Prepare bid documents (if appropriate, electronic), conduct offering activities and evaluate bids for competitive sales;
7. Assist in the selection of underwriters for negotiated sales;
8. Monitor market conditions and recommend optimal time for market entry;
9. Assist, when appropriate, in negotiating the gross spread and the interest rates for each maturity offered;
10. Participate and assist in closings;
11. Provide recommendations at the COUNTY's request on the investment of proceeds;
12. Obtain or assist in obtaining commitments from bond insurers;
13. Obtain bids or proposals for bond insurers, financial printing services, escrow verification services, paying agents, registrar and other services as required;
14. Provide an opinion as to the appropriateness and fairness of each bond issue including an evaluation of the underwriters' performance;
15. Present a report and summary conclusions on each bond issue to the Board of County Commissioners after closing; and
16. Perform other debt related services as required.

## **TASK II**

### **A. Services Relative to Other Financial Planning and General Financial Advisory Services**

On an as needed basis, the COUNTY may use a work order to request financial planning and/or advisory services not described in TASK I. Such services may include, but may not be limited to, the following:

1. Computer modeling of revenue and expenditures;
2. Development of a master financing structure for multiple issues of debt;
3. Analysis of financing alternatives for specified programs or projects;
4. Development of goals, objectives and criteria to be incorporated in a long range comprehensive debt management system;
5. Development of an extraordinary financing structure that is subsequently used by the COUNTY for issuance or refunding of debt Obligations;
6. Preparation of a rating agency program or presentation not directly related to the issuance of debt;
7. Financial and/or economic impact of specific programs being considered or proposed;
8. Provide investment management services such as escrow monitoring and/or restructuring (where appropriate);
9. Monitor the COUNTY's debt structure and provide innovative or creative ideas for enhancing the COUNTY's position (i.e., improving coverage, reducing debt load, reducing interest rate, removing restrictive covenants, etc.); and
10. Perform other related services as required as it relates to financial planning and general financial advisory services.

**SEMINOLE COUNTY, FLORIDA  
SCHEDULE OF OUTSTANDING BONDS  
As of January 1, 2007**

Issue Title	Amount Issued	Outstanding Principal
<b><u>General Obligation Bonds</u></b>		
Limited General Obligation Refunding and Acquisition Bonds, Series 1996	\$19,130,000	\$8,900,000
Limited General Obligation Bonds, Series 2001	\$18,900,000	\$12,465,000
Limited General Obligation Bonds, Series 2005	<u>\$6,090,000</u>	<u>\$5,410,000</u>
<b>Total</b>	<b>\$44,120,000</b>	<b>\$26,775,000</b>
<b><u>Special Obligation Bonds</u></b>		
Gas Tax Revenue Refunding Bonds, Series 2002	\$14,130,000	\$11,325,000
Sales Tax Revenue Refunding Bonds, Series 1998	\$24,060,000	\$23,170,000
Sales Tax Revenue Bonds, Series 2001	\$47,975,000	\$5,585,000
Sales Tax Revenue Bonds, Series 2005A	\$35,365,000	\$34,700,000
Sales Tax Revenue Refunding Bonds, Series 2005B	<u>\$39,700,000</u>	<u>\$39,700,000</u>
<b>Total</b>	<b>\$161,230,000</b>	<b>\$114,480,000</b>
<b><u>Enterprise Fund Bonds</u></b>		
Water and Sewer Revenue Refunding and Improvement Bonds, Series 1992	\$79,185,000	\$29,665,000
Water and Sewer Revenue Bonds, Series 1999	\$43,435,000	\$1,010,000
Water and Sewer Revenue Bonds, Series 2005	\$40,655,000	\$40,610,000
Water and Sewer Revenue Bonds, Series 2006	\$154,385,000	\$154,385,000
Solid Waste Disposal System Revenue Refunding Bonds, Series 2003	<u>\$12,210,000</u>	<u>\$10,155,000</u>
<b>Total</b>	<b>\$329,870,000</b>	<b>\$235,825,000</b>
<b>OVERALL TOTAL</b>	<b>\$535,220,000</b>	<b>\$377,080,000</b>

EXHIBIT B

Section 5  
Price Proposal

PROJECT: **FINANCIAL CONSULTING SERVICES**  
COUNTY CONTRACT NO. **RFP-600149-07/TLR**

Name of Proposer: First Southwest Company

Mailing Address: 20 North Orange Avenue, Suite 1209, Orlando, Florida 32801

Street Address: 20 North Orange Avenue, Suite 1209

City/State/Zip: Orlando, Florida 32801

Phone Number: ( 407 ) 426.9611

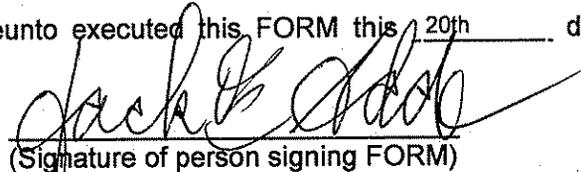
FAX Number: ( 407 ) 426.7835

Pursuant to and in compliance with the Request for Proposals, Instructions to Proposers, and the other documents relating thereto, the undersigned Proposer, having familiarized himself with the terms of the Contract Documents, local conditions affecting the performance of the Work, and the cost of the Work at the places where the Work is to be done, hereby proposes and agrees to perform the Work and complete in a workmanlike manner, all of the Work required in connection with the required services. all in strict conformity Contract Documents, including Addenda Nos. 1 through 3, on file at the Purchasing Division for the amount hereinafter set forth.

The undersigned, as Proposer, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any person, firm or corporation; and he proposes and agrees, if the proposal is accepted, that he/she will execute an Agreement with the COUNTY in the form set forth in the Contract Documents; that he/she will furnish Insurance Certificates, that he is aware that failure to properly comply with the requirements set out in the "Instructions to Proposers" and elsewhere in the Contract Documents may result in a finding that the Proposer is non-responsive.

IN WITNESS WHEREOF, PROPOSER has hereunto executed this FORM this 20th day of February, 2007.

First Southwest Company  
(Name of PROPOSER)

  
(Signature of person signing FORM)

Jack E. Addams  
(Printed name of person signing FORM)

Managing Director  
(Title of person signing FORM)

**Section 5  
Price Proposal**

PROJECT:  
COUNTY CONTRACT NO.

**FINANCIAL CONSULTING SERVICES  
RFP-600149-07/TLR**

In accordance with the RFP, the undersigned Proposer hereby submits the following for providing Seminole County with the required services. The Proposer certifies that this proposal is based upon all conditions as listed in the RFP.

**TIME BASIS METHOD**

CATEGORY/POSITIONS:

HOURLY RATES:

Senior Professional(s)

\$ See attached.

Professional(s)

\$ \_\_\_\_\_

Para Professional(s)

\$ \_\_\_\_\_

Other categories:

\$ \_\_\_\_\_

**FEE PER \$1,000.00 BONDS METHOD**

\$ 17,500

FOR THE FIRST \$ 20,000,000

\$ 1.00 per \$1,000

\$ 20,000,001 - \$40,000,000

\$ 0.75 per \$1,000

\$ 40,000,001 - \$60,000,000

\$ 0.75 per \$1,000

\$ 60,000,001 - \$80,000,000

\$ 0.75 per \$1,000

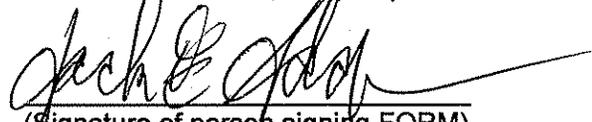
\$ 80,000,001 - \$100,000,000

\$ 0.75 per \$1,000

FOR AMOUNT OVER \$ 100,000,000

First Southwest Company

\_\_\_\_\_  
(Name of PROPOSER)

  
(Signature of person signing FORM)

Jack E. Addams

\_\_\_\_\_  
(Printed name of person signing FORM)

Managing Director

\_\_\_\_\_  
(Title of person signing FORM)



The proposed hourly fee schedule is as follows:

Position	Standard Billing Rate (per hour)	Seminole County Discounted Rate (per hour)
Senior Vice Presidents & Managing Directors	\$350	\$175
Vice Presidents	\$275	\$150
Assistant Vice Presidents	\$225	\$140
Analysts and Associates	\$190	\$125
Clerical/Support	\$90	\$60

First Southwest will bill at cost out-of-pocket expenses for travel, lodging, communications, computer, and copying. The County will pre-approve out-of state travel for either Florida-based or out-of-state First Southwest employees, whether for rating trips or other purposes deemed necessary by the County.

The County will be responsible for the following ancillary expenses, if and when applicable, whether it is charged directly to the County as expenses or charged to the County by First Southwest as reimbursable expenses:

- Bond counsel
- Bond printing
- Bond ratings
- Certified Public Accountant fees for refunding
- Computer structuring
- Credit enhancement
- Disclosure counsel
- Miscellaneous, including copy, delivery, and phone charges (subject to the above referenced cap)
- Official statement preparation and printing
- Paying agent/registrar/trustee
- Travel expenses (subject to the above referenced cap)
- Underwriter and underwriter's counsel

The charges for ancillary services, including computer structuring and official statement printing, shall be levied only for those services that are reasonably necessary in completing the transaction and that are reasonable in amount, unless such charges were incurred at the specific direction of the County.

The payment of reimbursable expenses that First Southwest has assumed on behalf of the County shall not be contingent upon the delivery of bonds and shall be due at the time that services are rendered and payable upon receipt of an invoice therefore submitted by First Southwest.

C-1. If requested by the County, we propose an "Agent" fee for the competitive bidding for the investment of bond proceeds for construction or refunding escrows. The proposed Treasury Regulations in effect at the time of bidding will dictate such "Agent" fee. The "Successful Bidder" pursuant to the bidding specifications and proposal will pay such fees.

C-2. With respect to the structuring of an interest rate swap or other synthetic financing, the County's financial product provider will be notified by First Southwest, prior to any transaction execution, of the obligation to pay First Southwest a structuring and negotiation fee, as the County's agent, equal to the net present value of 3 basis points (.03%) on the notional principal face of the transaction.

C-3. For arbitrage rebate calculations, we propose a fee of \$2,500.00 per calculation per year.

Additional arbitrage fee information follows.

**First Southwest Asset Management, Inc. – Arbitrage Rebate Compliance Services**

**Fee Schedule**

FSAM's fee for arbitrage rebate services is a fixed annual fee per issue. The annual fee is charged based upon the number of years that proceeds exist subject to rebate from the delivery date of the issue to the computation date. For example, the five-year computation fee for an issue with proceeds that spend within three years calculates to be \$7,500 (\$2,500 \* 3 years). Additional fees are charged for complexities, such as reserve fund allocations, transferred proceeds, debt service residual, etc. *The maximum charged for a given issue, however, will not exceed the base fee + one additional charge. The annual fees are also reduced when all or a majority of the proceeds are expended (for more information, please see description of itemized per issue fees below).*

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Description	Annual Fees Per Issue Per Computation Year <sup>(1)</sup>
Base Fee Per Computation Year:	\$2,500
<i>Additional Charges for Special Services Related to:</i>	
Debt Service Reserve Funds	\$500
Commingled Funds	\$500
Transferred Proceeds	\$500
Debt Service Fund Residual Calculations/\$100,000 Test	\$500
Variable/Floating Rate Bond Issue	\$1,000
Yield Restriction Analysis/Yield Reduction Computation	\$500
Universal Cap	\$500
Calculation of Late Interest Amount	\$500
Premium for Quick Turnaround (Preliminary or Final Liability Numbers within 21 days or less of receipt of data)	\$500
Preparation of IRS Refund Request <sup>(2)</sup>	
Commercial Paper: Per allocated issue to perform arbitrage rebate computation	\$4,000
Penalty Calculations: Semiannual fee for each issue of Bonds, regardless of issue size.	\$1,000

<sup>(1)</sup> A *Computation Year* represents a one-year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one "computation year," the annual fee is multiplied by the number of computation years contained in the calculation being performed. For example, if the first calculation performed for an issue covers three computation years, the fee for that calculation would be three times the annual fees stated above.

<sup>(2)</sup> Fee based upon complexities involved and estimated time to complete request.

Recognizing that computational complexities are reduced when all or the majority of the gross proceeds of an issue are expended is First Southwest's policy and we will reduce fees to the following levels, as appropriate:

**Per issue fees for each circumstance itemized below shall be:**

Proceeds expended in prior year.	\$ 750
Liability updated and report issued	
Debt Service Residual Calculation only	\$1,250
Reserve Fund calculation only	\$1,250
Escrow Fund only	\$1,250
Rebate Fund only	\$1,250
Yield Restriction/Yield Reduction Computation only	\$2,000

**Explanation of Adjustments to Base Fee**

- 1. Debt Service Reserve Funds.** The authorizing documents for many revenue bond issues require that a separate fund be established (the "Reserve Fund") into which either bond proceeds or revenues are deposited in an amount equal to some designated level, such as average annual debt service on all parity bonds. This Reserve Fund is established for the benefit of the bondholders as additional security for payment on the debt. In most instances, the balance in the Reserve Fund remains stable throughout the life of the bond issue. Reserve Funds, whether funded with bond proceeds or revenues, must be included in any calculations of rebate.
- 2. Commingled Fund Allocations.** By definition, a commingled fund means that the **proceeds** of any particular bond issue have been deposited in a fund that contains amounts that are not part of that bond issue. Issuers commonly commingle bond proceeds with either operating revenues or other bond proceeds. The arbitrage regulations, while permitting the commingling of funds, require that bond proceeds be "carved-out" for purposes of calculating rebate. Interest must be allocated to the portion of the commingled fund that represents bond proceeds of the issue in question.
- 3. Transferred Proceeds Calculations.** When a bond issue is refinanced (refunded) by another issue, special services **relating** to "transferred proceeds" calculations may need to be performed. Under the regulations, when proceeds of a **refunding** issue are used to pay principal on a prior issue, a pro-rata portion of the refunded bond proceeds are treated as "transferred" to the refunding issue. Although no funds are physically transferred from one issue to another, performing

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these calculations for rebate purposes is often necessary.

4. **Debt Service Fund Residual Calculations.** Because tax rates are established using an estimated collection percentage, the balance in the debt service fund (often referred to as the "Interest & Sinking Fund") may exceed the amount necessary to pay the current year's debt service requirements. Any such excess amounts in a debt service fund must be treated as a "reserve fund," thereby subjecting the excess balance to the rebate requirements. To the extent that any amounts deposited in the debt service fund remain for more than 13 months on a first-in, first-out basis, that excess is classified as a "reserve fund portion" until used for payment of debt service. Special services are required to complete these debt service fund residual calculations.
5. **\$100,000 Test for Debt Service Funds.** The Code requires that a bona fide debt service fund be included in the arbitrage rebate computation if it earns \$100,000 or more in a given bond year and if the issue is not a private activity bond and a long-term fixed rate issue.
6. **Variable/Floating Rate Bond Issues.** Special services are also required to perform the arbitrage rebate calculations for variable rate bonds. A bond is a variable rate bond if the interest rate paid on the bond is dependent upon an index which is subject to changes subsequent to the issuance of the bonds. The computational requirements of a variable rate issue are more complex than those of a fixed rate issue and, accordingly, require significantly more time to calculate. For example, evaluating both a five-year yield as well as one-year yield increments is necessary to determine which yield is most beneficial to the issuer.
7. **Yield Restriction Analysis/Yield Reduction Computations.** The Code provides that proceeds of a bond issue may not be invested above the yield on the bond unless an applicable exception applies which provides a temporary period during which proceeds are not yield restricted. First Southwest provides analysis to determine the amount of proceeds which must be yield restricted and provides computations to verify that the proceeds have been properly restricted. In

addition, the 1993 Treasury Regulations provide that a yield reduction payment may be made in lieu of yield restricting proceeds. First Southwest will provide the necessary computations to determine the amount of yield reduction payment which must be made.

8. **Universal Cap.** Current regulations provide an overall limitation on the amount of gross proceeds allocable to an issue. In certain circumstances, de-allocating proceeds from an issue is necessary. First Southwest reviews the universal cap limitation for each bond issue at the appropriate time periods and, if necessary, performs the de-allocation of proceeds.
9. **Calculation of Late Interest Amount.** Additional calculations are required if an arbitrage rebate payment is not filed within the time permitted by the regulations. A fee is charged to compute the late interest amount from the time that the payment originally was due until the time the payment is made.

The fee for any bonds under this contract shall be payable only if a computation is required under Section 148(f)(2) of the Code. In the event that any of the bonds fall within exclusion to the computation requirement as defined by Section 148 of the Code or related regulations and First Southwest is not required to make calculations to make that determination, First Southwest will not charge a fee. For example, certain bonds are excluded from the rebate computation requirement if the proceeds are spent within specific time periods. In the event a particular issue of bonds fulfills the exclusion requirements of the Code or related regulations, the specified fee will be waived by First Southwest if no calculations were required to make the determination.

First Southwest's fees are payable upon delivery of the report prepared by First Southwest, the first report to be made following one year from the date of delivery of the bonds and on each computation date thereafter during the term of the agreement. The fees for computations of the arbitrage amount which encompass more, or less, than one computation year of investment data performed during the same computation period shall be prorated to reflect the longer, or shorter, period of work performed during that period. Our standard contract term is five years.