

# Memorandum



**Date:** October 16, 2020

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

**Subject:** Recommendation for Approval to Award RFP-01487, Property Insurance Broker Services Program

HCCO  
Agenda Item No. 3C

## **Recommendation**

It is recommended that the Board of County Commissioners (Board) approve competitive contract awards, *Contract No. RFP-01487A, RFP-01487B and RFP-01487C, Property Insurance Broker Services Program* for the Internal Services Department. Each contract will provide brokerage and related services for three groups, as follows: Group A - Master Property Insurance Program; Group B - Public Housing Agency Property Insurance Program; and Group C - Airport Liability Insurance Program. These contracts will replace the following competitively solicited contracts:

- *RFP684, Master Property Insurance Program Broker Services*, was awarded under Resolution No. R-1368-09;
- *RFP693, Miami-Dade Housing Authority Insurance Program Broker Services*, was awarded under Resolution No. R-221-10; and
- *RFP713, Miami-Dade Aviation Department Airport Liability Insurance Program Broker Services*, was awarded under Resolution No. R-732-10.

The Master Property Insurance Broker Services Program assists the County in acquiring insurance policies for various real and personal properties throughout the County including boiler and machinery coverage, terrorism coverage, forced placed coverage, National Flood Insurance Program (NFIP) policies and related loss prevention services. The Public Housing Agency Property Insurance Program Broker Services assists the County in acquiring insurance policies for various housing agency properties and facilities located throughout the County and includes catastrophic modeling analysis for the determination of appropriate deductible/self-insurance levels and insurance limits, analysis of current trends for insurance premiums, recommendations of enhancements to current insurance programs, and annual reports. The Airport Liability Insurance Program Broker Services assists the County in acquiring insurance policies for five airports owned and operated by the County, including Miami International Airport, Opa-Locka Executive Airport, Tamiami Executive Airport, Homestead General Aviation Airport, and the Dade Collier Training and Transition Airport.

The County issued a competitive Request for Proposals on March 13, 2020. Three thousand, seven-hundred and eight vendors were notified, of which 50 viewed the solicitation and four responded. The award is recommended to Arthur J. Gallagher Risk Management Services, Inc. (Gallagher), the highest ranked responsive and responsible proposer, for all groups. Gallagher maintains a local office in Miami-Dade County.

## **Scope**

The scope of this item is countywide in nature.

## **Fiscal Impact/Funding Source**

The fiscal impact for the five-year term is \$2,350,000. The current contracts have a combined, cumulative value of \$4,498,750, distributed as follows:

- *RFP684, Master Property Insurance Program Broker Services*, has a cumulative value of \$3,875,000 for a 10-year and six-month term, and expires on November 3, 2020. Although the broker services contract expires, the insurance coverages are in place until April 15, 2021;
- *RFP693, Miami-Dade Housing Authority Property Insurance Program Broker Services*, has a cumulative value of \$367,500 for a 10-year and six-month term, and expires on January 1, 2021; and
- *RFP713, Miami-Dade Aviation Department Airport Liability Insurance Program Broker Services*, has a cumulative value of \$256,250 for a 10-year and three-month term, and expires on January 1, 2021.

The allocation under the contract is higher than the previous contracts due to the increase in the cost for insurance brokerage services, which is in line with the price index for these types of services.

Department	Allocation	Allocation by Program	Funding Source	Contract Manager
Internal Services	\$2,350,000	Master Insurance Program: \$2,000,000	General Fund	Baunie McConnell
		Public Housing Agency Property Insurance Program: \$200,000	Federal Funds	
		Airport Liability Insurance Program: \$150,000	MDAD Operating Funds	
<b>Total:</b>	<b>\$2,350,000</b>			

**Track Record/Monitor**

Pearl Bethel of the Internal Services Department is the Procurement Contracting Manager.

**Delegated Authority**

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38. The option to renew terms will be presented to the Board for approval.

**Vendor Recommended for Award**

A Request for Proposal was issued under full and open competition on March 13, 2020. Four proposals were received in response to the solicitation.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Group Awarded	Principal
			1) Miami-Dade 2) Percentage*		
Arthur J. Gallagher Risk Management Services, Inc	2850 Golf Road Rolling Meadows, IL	9155 South Dadeland Boulevard Suite 1112 Miami, FL	40	Groups A, B and C	Michael R. Pesch
			Less than 1 %		

\*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce.

**Vendors Not Recommended for Award**

<b>Vendor</b>	<b>Local Address</b>	<b>Reason for Not Recommending</b>
Customers Rule Insurance Agency, Inc	Yes	Evaluation Scores/Ranking
Marsh USA, Inc.	Yes	
Royal Palm Insurance Agency, Inc	Yes	Deemed non-responsive by the County Attorney's Office (opinion attached)

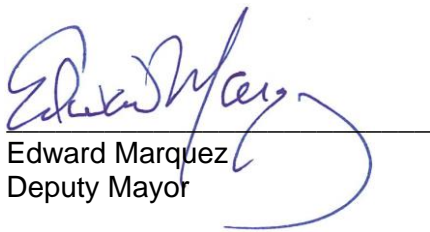
**Due Diligence**

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user department. The scope of services was updated to remove services no longer required and to add services where needed.

**Applicable Ordinances and Contract Measures**

- The two percent User Access Program provision applies where permitted by the funding source.
- The Small Business Enterprise Selection Factor and Local Preference were applied where permitted by the funding source.
- The Living Wage does not apply.



Edward Marquez  
 Deputy Mayor

**Date:** May 18, 2020

**To:** Coleen Christie  
Procurement Contracting Officer  
Strategic Procurement Division  
Internal Services Department

**From:** Angela F. Benjamin  
Assistant County Attorney

**Subject:** Responsiveness of Royal Palm Insurance Agency, Inc. for Property Insurance Broker Services (RFP No. 01487) (the “Solicitation”)

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You have asked this office if a proposal received in response to the Solicitation from Royal Palm Insurance Agency, Inc. (“Royal Palm”) is responsive. We rely on the information provided in your May 15, 2020 memorandum, the Solicitation documents, and Royal Palm’s proposal. I am advised that the estimated value of the contract exceeds \$1 million, and as such provide a formal responsiveness opinion.

After reviewing the relevant documents and for the reasons detailed below, we conclude that Royal Palm’s proposal is non-responsive.

## FACTS

The Solicitation is seeking proposals for the selection of insurance broker(s) for various County departments. The Solicitation identifies three distinct groups for which proposers can propose to provide insurance broker services. Proposers were permitted to submit a proposal for any or all of the three groups and may be selected for more than one group. Section 1.1 of the Solicitation provides that, “Proposers responding to this RFP are required to submit a separate Proposer Information Section and Form 1, Price Proposal Schedule for each Group they are proposing to provide services for.” Section 3.1 of the Solicitation also specifically provides that in response to the Solicitation, proposers “are required to submit the Proposer Information Section and Form 1, Price Proposal Schedule for each Group for which they are proposing to provide services.”

In response to the Solicitation, Royal Palm submitted a proposal dated April 24, 2020. Royal Palm’s proposal failed to include either the Technical Proposal (Proposer Information Section) or the Form 1 – Price Proposal, as required by the Solicitation.

## DISCUSSION

Under Florida law, a bid or proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade Cnty., 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used a two part test to determine if a specific noncompliance in a bid would constitute a substantial and, thus, nonwaivable, issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a

position of advantage over other proposers. See Glatstein v. City of Miami, 399 So. 2d 1005 (Fla. 3d DCA 1981).

Based on the facts above, Royal Palm’s “proposal” is non-responsive. The “proposal” fails to meet the Solicitation’s submission requirements, fails to identify the pricing information, which group it is proposing to provide services for, or provide any of the submission information needed for the County to compare the proposal to other submissions. Royal Palm’s submittal therefore does not provide the County the assurance that a contract will be performed and guaranteed in accordance with the terms of the Solicitation.<sup>1</sup>



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Angela F. Benjamin

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<sup>1</sup> In addition, although you did not request a responsiveness opinion on any other proposals, you did note that you received additional information under the “exceptions” question of the Solicitation from two of the proposers (Arthur J. Gallagher Risk Management Services (“Arthur”) and Marsh). You asked me if this information is best addressed in negotiations. You then provided single pages from each of Arthur’s and Marsh’s proposal on which to base my answer. Based on this limited information, and because neither Arthur nor Marsh condition their proposal on changing the terms of the Solicitation or on adding additional terms to the Solicitation, these issues appear to be best addressed during negotiations to the extent the proposer is selected to move forward.



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** November 19, 2020

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01487A, RFP-01487B, AND RFP-01487C TO ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC. GROUPS A, B, AND C FOR THE PURCHASE OF PROPERTY INSURANCE BROKER SERVICES PROGRAM FOR THE INTERNAL SERVICES DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$2,350,000.00 FOR THE FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that:

**Section 1.** This Board approves award of Contract No. RFP-01487A, RFP-01487B, and RFP-01487C to Arthur J. Gallagher Risk Management Services, Inc. Groups A, B, and C for the purchase of Property Insurance Broker Services Program for the Internal Services Department, in substantially the form attached and made a part hereof, in a total amount not to exceed \$2,350,000.00 for the five-year term.

**Section 2.** This Board authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to 2-8.1 of the Code of Miami-Dade County and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner \_\_\_\_\_,  
who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and  
upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	

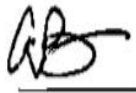
The Chairperson thereupon declared this resolution duly passed and adopted this 19<sup>th</sup> day of November, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Angela F. Benjamin



MASTER PROPERTY INSURANCE PROGRAM  
Contract No. RFP 01487A

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ by and between Arthur J. Gallagher Risk Management Services, Inc , a corporation organized and existing under the laws of the State of Illinois, having its principal office at 2850 Golf Road, Rolling Meadows, IL 60008 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the state of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County") (collectively, the "Parties"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide insurance broker services and related services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 01487 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated \_\_April 24, 2020\_\_, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such brokerage and related services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 01487 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Manager" to mean the County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

- c) The word "Contractor" to mean Arthur J. Gallagher Risk Management Services, Inc., and its permitted successors.
- d) The word "Days" to mean calendar days.
- e) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- f) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Project Manager.
- g) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- h) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- i) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- j) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## **ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 42 of the Agreement, 2) the Scope of Services (Appendix A), 3) the County's RFP No. 01487 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in the Contract are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor

affect the meaning thereof.

#### **ARTICLE 4. NATURE OF THE AGREEMENT**

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. CONTRACT TERM AND RENEWAL**

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the sixtieth (60) month thereafter. The County, at its sole discretion, may renew this Contract for one (1) additional five (5) year period subject to approval by the Board of County Commissioners. The County may extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

#### **ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed

sufficiently served if delivered by registered or certified mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County  
Attention: Baunie McConnell  
Phone: (305) 375-3583  
E-mail: Baunie.McConnell@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Strategic Procurement Division  
Attention: Chief Procurement Officer  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Phone: (305) 375-4900  
E-mail: [Namita.Uppal@miamidade.gov](mailto:Namita.Uppal@miamidade.gov)

**(2) To the Contractor**

Arthur J. Gallagher Risk Management Services, Inc.  
Attention: Ilene Abella  
Area Vice President  
9155 S. Dadeland Blvd, Suite 1112  
Miami, FL 33156  
Phone: (305) 639-3106  
E-mail: [Ilene\\_Abella@ajg.com](mailto:Ilene_Abella@ajg.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with Appendix B – Form1-Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

**ARTICLE 8. PRICING**

Prices shall remain firm and fixed for the initial term of the Contract, including any extensions thereof, as indicated in Appendix B – Form 1-Price Schedule. Any agreed upon price increase by the County shall be capped at 2% of the previous annual broker fee. However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

**ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Form 1-Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
ISD/Risk Management, Property & Casualty Unit  
111 N.W. 1<sup>st</sup> Street, Suite 2340  
Miami, Florida 33128-1989  
Attention: Property & Casualty Manager

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

**ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. General Liability Insurance in an amount not less than \$1,000,000 per occurrence. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$2,000,000 per claim. Deductible per claim not to exceed ten percent (10%) of the limit of liability.

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County**  
**111 N.W. 1<sup>st</sup> Street**  
**Suite 2340**  
**Miami, Florida 33128-1974**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel

if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. The County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

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

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 14. DISPUTE RESOLUTION PROCEDURE**

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project



Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. **Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.**
- d) In the event of such dispute, the Parties authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.
- f) This Article will survive the termination or expiration of this Agreement.

#### **ARTICLE 15. MUTUAL OBLIGATION**

Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

#### **ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

**ARTICLE 17. AUDITS**

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five (5) business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

**ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the

satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- e) The County shall have the right to withdraw its consent to a Subcontractor if it appears to the County that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

#### **ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

#### **ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

#### **ARTICLE 23. TERMINATION AND SUSPENSION OF WORK**

- a) This Agreement may be terminated for cause by the County for reasons including, but not limited to, the following: (i) the Contractor commits an Event of Default (as defined below in Article 24); or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a)(ii) above, the County may, in its sole discretion, also terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated

- with such termination or cancellation, including attorneys' fees.
- d) The foregoing notwithstanding, if the Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, the Contractor may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- e) In the event that the County exercises its right to terminate this Agreement under this Article 23, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
- i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
  - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

#### **ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default is a material breach of this Agreement by the Contractor, including but not limited to:
- i. the Contractor has not delivered Deliverables on a timely basis;
  - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's

- creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
  - vii. the Contractor has failed in the representation of any warranties stated herein; or
  - viii. the Contractor fails to comply with Article 39 below.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement and/or a material breach of this Agreement; and
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, terminating this Agreement or taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County terminates this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE**

If the County determines, in its sole discretion, that an Event of Default has occurred, the County may, but is not required to, so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County deems appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. If the County chooses to issue a Default Notice, the Default Notice shall specify the date the Contractor shall discontinue the Services and stop work (i.e., the Effective Termination Date).

#### **ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

#### **ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorneys' fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

**ARTICLE 28. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) In the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

**ARTICLE 29. PROPRIETARY INFORMATION**

As a political subdivision of the state of Florida, Miami-Dade County is subject to Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by

the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

### **ARTICLE 30. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the



technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## **ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST**

### **a) Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- |   |   |
|---|---|
| <p><b>1. Miami-Dade County Ownership Disclosure Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>                    | <p>(Sections 2-8.1(i), 2-11.1(b) (1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)</p>                                       |
| <p><b>2. Miami-Dade County Employment Disclosure Affidavit</b> (Section 2.8.1(d) (2) of the Code of Miami-Dade County)</p>                | <p><b>8. Miami-Dade County Family Leave Affidavit</b><br/>(Article V of Chapter 11 of the Code of Miami-Dade County)</p>                            |
| <p><b>3. Miami-Dade County Employment Drug-free Workplace Certification</b><br/>(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> | <p><b>9. Miami-Dade County Living Wage Affidavit</b><br/>(Section 2-8.9 of the Code of Miami-Dade County)</p>                                       |
| <p><b>4. Miami-Dade County Disability and Nondiscrimination Affidavit</b><br/>(Section 2-8.1.5 of the Code of Miami-Dade County)</p>      | <p><b>10. Miami-Dade County Domestic Leave and Reporting Affidavit</b> (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p> |
| <p><b>5. Miami-Dade County Debarment Disclosure Affidavit</b><br/>(Section 10.38 of the Code of Miami-Dade County)</p>                    | <p><b>11. Miami-Dade County E-Verify Affidavit</b><br/>(Executive Order 11-116)</p>   |
| <p><b>6. Miami-Dade County Vendor Obligation to County Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>             | <p><b>12. Miami-Dade County Pay Parity Affidavit</b><br/>(Resolution R-1072-17)</p>   |
| <p><b>7. Miami-Dade County Code of Business Ethics Affidavit</b></p>  | <p><b>13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit</b><br/>(Resolution R-919-18)</p>                                       |
|   | <p><b>14. Subcontracting Practices</b><br/>(Section 2-8.8 of the Code of Miami-</p>   |

Dade County)

**15. Subcontractor/Supplier Listing**

(Section 2-8.1 of the Code of Miami-Dade County)

**16. Form W-9 and 147c Letter**

(as required by the Internal Revenue Service)

**17. FEIN Number or Social Security Number**

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records

- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

**18. Office of the Inspector General**

(Section 2-1076 of the Code of Miami-Dade County)

**19. Small Business Enterprises**

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

**20. Antitrust Laws**

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

**b) Conflict of Interest and Code of Ethics**

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

**ARTICLE 32. INSPECTOR GENERAL REVIEWS****Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

As applicable, the Contractor shall comply, subject to applicable professional standards, with the provisions of any and all applicable federal, state and County orders, statutes, ordinances, rules and regulations which may pertain to the Services, including, but not limited to:

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, and implementing regulations at 41 C.F.R. part 60.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by the Department of Labor regulations (29 CFR Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."

- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- o) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, the Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### **ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

#### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this

Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

The County may terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the state of Florida. Venue shall be Miami-Dade County.

**ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)****a) User Access Fee**

Pursuant to Section 2-8.10 of the Code of Miami-Dade County, this Contract is subject to a user access fee under the County User Access Program ("UAP") in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from the solicitation referenced on the first page of this Contract, and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Contractor participation in this invoice reduction portion of the UAP is mandatory.

**b) Joint Purchase**

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within three (3) business days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

**ARTICLE 40. FIRST SOURCE HIRING REFERRAL PROGRAM (“FSHRP”)**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board (“SFWIB”), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

**ARTICLE 41. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Contractor shall comply with the Public Records Laws of the state of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida’s public records laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, [ISD-VSS@MIAMIDADE.GOV](mailto:ISD-VSS@MIAMIDADE.GOV), 111 NW 1<sup>ST</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**



**ARTICLE 42. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date that the Agreement is executed below.

Contractor

Miami-Dade County

By: Zeb Holt  
 Name: Zeb Holt  
 Title: Regional EVP - Florida  
 Date: 09/04/2020  
 Attest: April Anne Howard  
 Corporate Secretary/Notary Public

By: \_\_\_\_\_  
 Name: Carlos A. Gimenez  
 Title: Mayor  
 Date: \_\_\_\_\_  
 Attest: \_\_\_\_\_  
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency



Angela [Signature]

Assistant County Attorney

**APPENDIX A – SCOPE OF SERVICES****GROUP A  
MASTER PROPERTY INSURANCE PROGRAM****Background**

The County requires an insurance broker to provide brokerage services for procurement of the County's Master Property Insurance Program (MPI). The Contractor shall provide broker services that will assist the County in managing the Program. The County intends to purchase the broker services for the MPI on a flat fee basis for the term of the contract and any extensions and renewals thereof.

**2.1 Master Property Insurance Program**

The MPI includes coverage for real and personal property for various properties throughout the County. The MPI also includes, but is not limited to Boiler and Machinery, Terrorism, Forced Placed Coverage, National Flood Insurance Program (NFIP) policies, Builder's Risk and related loss control prevention services. The MPI does not cover Miami-Dade County Water and Sewer, Miami-Dade Public Housing Properties.

**2.2 Minimum Qualification Requirement**

The minimum qualification requirement for this Group is that the Contractor's key personnel assigned to this contract shall be licensed insurance agents for General Lines (Property & Casualty) in the state of Florida, as of the proposal due date. The Contractor shall provide copies and maintain the state of Florida insurance agent license for all key personnel proposed to provide services during the term of the contract, including extensions and renewals thereof.

**Note:** Licenses shall be maintained for the duration of the contract and any extensions and renewals thereof.

**2.3 Services to be Provided**

The Contractor shall:

- 2.3.1 Design specifications and market the MPI for coverage when required by RMD, including assisting RMD in the completion of all applications, documents and gathering data which may be requested by insurance companies.
- 2.3.2 Analyze proposals received from various insurance companies and other parties, negotiate changes, in the best interest and for the benefit of the County, and verify the reasonableness of the price for the coverage provided.
- 2.3.3 Suggest alternative risk financing vehicles to reduce the County's cost of risk.
- 2.3.4 Perform catastrophic (CAT) modeling analysis to assist the County in determining appropriate deductible/self-insurance levels and insurance limits.
- 2.3.5 Provide the County with a summary of various MPI options, including but not limited to: limits, coverage, retention levels, terms, conditions and payment options.
- 2.3.6 Make recommendations to the County for the most advantageous MPI which provides the highest level of coverage at the best possible price to meet the County's needs and objectives.
- 2.3.7 Provide analysis and recommendations for the most cost effective means for addressing the County's property exposures.

- 2.3.8 Represent the County in all negotiations with insurers, underwriters and other parties related to the Program.
- 2.3.9 When instructed by RMD, administer the placement of coverage and provide original binders, policies and endorsements as required in the timetable specified.
- 2.3.10 Provide extensive review of binders and policies, including verification of conformity to specifications. Request any necessary endorsements/changes/revisions that may be required.
- 2.3.11 Prepare an easy to read chart of the Programs including limits, pricing and coverages by layer.
- 2.3.12 Provide binders and policies in a single 3-ring binder with a table of contents, evidencing layer and limits in the programs in an easy to follow format.
- 2.3.13 Provide insurance coverage summaries/descriptions/schedules as requested by RMD.
- 2.3.14 Ensure that insurance policies are placed with reputable and financially responsible insurers, including keeping the RMD informed of any changes in rating of the insurers and making recommendations should ratings change during the policy term.
- 2.3.15 Continually evaluate the MPI and recommend coverage changes and improvements to provide the highest level of coverage at the least possible cost to the County.
- 2.3.16 Oversee and coordinate all relevant services performed by insurance companies/underwriters or any service agencies arranged for MPI related issues and concerns.
- 2.3.17 Perform administrative and clerical services relative to account management, including but not limited to, issuance of certificates of insurance, verification of the accuracy of bills, audits and all premium adjustments.
- 2.3.18 Submit all premiums/payments to carriers and other parties. All payments/premiums will be made directly to the .
- 2.3.19 Assign an account executive to the MPI who will be responsible for communication with RMD and who, along with any other personnel assigned, must be available on a daily basis to RMD for advice and consultation on MPI related issues and concerns. The account executive primarily responsible for the account must be locally situated due to the extensive services required and the size and complexity of the Programs. This individual must also be available to attend meetings located in Miami.
- 2.3.20 Develop an annual billing spreadsheet that allocates each invoice to the corresponding schedule for the MPI.
- 2.3.21 Assist the County in maintaining and updating schedules of values and schedules of insurance by developing and maintaining a comprehensive database of all information provided. Amend schedules, analyze changes provided and compare new information to the existing schedule.
- 2.3.22 Assist the County with the development of the annual letter to the Division of Emergency Management requesting confirmation that the County's program meets the standard of a reasonable program as prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).

- 2.3.23 Attend quarterly meetings with Miami-Dade Aviation Department (MDAD) and their Trust Agreement Consultant in connection with the annual trust report.
- 2.3.24 Provide insurance documentation and be available to answer questions from the Trust Agreement Consultant.
- 2.3.25 Evaluate and respond to applicable portions of the trust report.
- 2.3.26 Attend meetings related to MPI with RMD staff and other parties, as requested.
- 2.3.27 Review any related insurance company audits for accuracy.
- 2.3.28 Act as a liaison between RMD and insurance carriers in the resolution of claims relating to the programs. The Contractor shall assist the County with the claims process as requested.
- 2.3.29 Consult with the County regarding the selection of outside claims counsel, for any claim (County reserves the right to approve legal counsel prior to appointment).
- 2.3.30 Advise the County, when requested, on coverage application to specific claims.
- 2.3.31 Maintain accurate claim data on an occurrence date basis and provide the County with status reports, in the form and frequency agreed upon with the County.
- 2.3.32 Assign a claim adjustment firm to handle claims for all layers of the coverage.
- 2.3.33 Promptly file all claims with all applicable insurers.
- 2.3.34 Coordinate meetings with claims adjusters and the County
- 2.3.35 Attend claims meetings as requested by the County.
- 2.3.36 Negotiate prompt settlement of claims with adjusters/underwriters.
- 2.3.37 Assist RMD by providing insurance related documentation in respect of any Federal Emergency Management Agency (FEMA) claims.
- 2.3.38 Consult with the County regarding the proposed counsel the selected Broker plans to use, if necessary, with any claim. (The County reserves the right to approve legal counsel prior to appointment.)
- 2.3.39 Contract with loss control firm to provide inspection, engineering services, plans review and thermo graphic imaging services.
- 2.3.40 Review all loss control reports with the County to ensure that significant recommendations are addressed.
- 2.3.41 Maintain copies of all inspection reports issued for the job site(s).
- 2.3.42 Identify locations to be covered by the National Flood Insurance Program (NFIP) policies
- 2.3.43 Request flood zone determinations.

- 2.3.44 Complete application for coverage with pertinent information including photographs of location to be covered.
- 2.3.45 Send application for NFIP coverage for issuance of policy.
- 2.3.46 Provide NFIP quotation to RMD.
- 2.3.47 Receive payment for NFIP policies and submit payment to carrier.
- 2.3.48 Review all NFIP policies for accuracy.
- 2.3.49 Maintain schedules for NFIP policies. Re-quote individual policies if necessary to ensure consistency with values on the master schedule.
- 2.3.50 Act as a liaison between any loss control professionals and the County, relating to this Program and maintain copies of all inspection/loss control reports issued.
- 2.3.51 Assist the County in developing scope of services for specifications for loss control firms.
- 2.3.52 Verify all billings from loss control firm including quarterly billings, time and expense and plans review billings.
- 2.3.53 Attend loss control meetings as requested by the RMD.
- 2.3.54 Be available to provide advice and consultations as requested by the RMD.
- 2.3.55 Provide other services as related to the Scope of Services upon request by the RMD.

## **2.4 OPTIONAL SERVICES (Group A-Master Property Insurance)**

### **2.4.1 Allied/Associated Insurance**

The County may request that the Contractor opine upon or obtain quotes for aligned and/or associated insurance and related services within the property casualty insurance arena that may benefit the County. At the County's discretion the County may opt to use the Contractor or solicit a new RFP for broker services for any insurance policies and related services except those included in GROUP B- PUBLIC HOUSING AGENCY PROPERTY INSURANCE PROGRAM of RFP01487B, and GROUP C- AIRPORT LIABILITY INSURANCE PROGRAM of RFP 01487C, or those currently purchased by the County. Terms and conditions as well as all fees or commission for broker services for the procurement of such additional insurance and related services shall be mutually agreed upon.

## APPENDIX B – FORM 1-PRICE SCHEDULE - MASTER PROPERTY INSURANCE PROGRAM

### A. Price

The flat, fixed-price shown below is the annual fee for providing all tasks and deliverables outlined in this Solicitation as stated in Section 2, Scope of Services-Master Property Insurance Program.

Description	Proposed Price
Year 1 -Annual Broker's Fee for Broker Services for the Master Property Insurance Program	\$ 360, 500
Year 2-Annual Broker's Fee for Broker Services for the Master Property Insurance Program	\$371, 315
Year 3-Annual Broker's Fee for Broker Services for the Master Property Insurance Program	\$382, 454
Year 4-Annual Broker's Fee for Broker Services for the Master Property Insurance Program	\$393, 928
Year 5-Annual Broker's Fee for Broker Services for the Master Property Insurance Program	\$405, 746

### **Negotiated Commission Rates - not included in the above annual broker compensation**

Commission Rate for Builders Risk Policy - 7%

Commission Rate for Wholesaler- 8%

Notes:

- a) The flat, fixed-price shall include full compensation for labor, material, all out-of-pocket expenses, such as travel, per diem, and miscellaneous costs and fees, which shall be incorporated in this Price Schedule, as they will not be reimbursed separately by the County.
- b) The broker fee shall be guaranteed for the initial term of the contract and any extension periods; and shall include all costs necessary to provide the services as described in this Solicitation.
- c) The price for the Master Property Insurance Program premium shall be reviewed and approved by the County each year of the Contract. The County shall pay the premium for the Master Property Insurance Program annually to the Contractor for transmittal to the insurance carriers. The broker fee and insurance premium shall be due annually at the insurance program inception date.
- d) The broker shall not accept contingent commissions, for the placement of the Master Property Insurance Program. The County reserves the right to negotiate the final terms and conditions as may be in the best interest of the County.
- e) **NFIP**- FEMA establishes rates for these policies and they cannot be changed or rebated. Broker may accept negotiated commissions on policies placed through the NFIP program.
- f) **Payment Options**
  - i. Traditional Payment Option - The County shall pay the broker a flat fee in accordance with the amount stated in the annual broker fee schedule above; OR
  - ii. Alternate Payment Option - The Broker will collect commissions from the insurance carrier(s) with which the Program is placed capped at the annual brokerage fee amount in accordance with the compensation amounts itemized in the **Price Schedule** above. The

Broker will collect commissions directly from the insurance carrier(s). In the event the sum of all commissions collected for a particular annual period is less than the applicable annual brokerage fee for any given renewal period, the County shall pay the difference so that the actual payment received by the Broker for any annual period is equal to the applicable brokerage fee for the respective contract year.

If the Broker is able to secure commissions from the insurance carrier(s) in excess of the applicable annual brokerage fee for any given renewal period, the additional funds will be available to the County to cover the cost of loss control services related to the Program provided by outside contractors as stipulated in the Scope of Services. The Broker shall use these funds, paid to the Broker by the insurance carrier(s), to pay the outside contractor for loss control services. Any commissions utilized for such payments shall not be considered a part of the broker compensation.

- g) Broker commissions for the administration of the **NFIP** policies, the placement of builders risk policies and/or **Allied/Associated Insurance** policies are in addition to the annual brokerage fees and shall not be included as part of any of the above calculations in the preceding sections.

PUBLIC HOUSING AGENCY PROPERTY INSURANCE PROGRAM  
Contract No. RFP 01487B

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ by and between Arthur J. Gallagher Risk Management Services, Inc. , a corporation organized and existing under the laws of the State of Illinois, having its principal office at 2850 Golf Road, Rolling Meadows, IL 60008 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the state of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County") (collectively, the "Parties"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide insurance broker services and related services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 01487 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 24, 2020, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such brokerage and related services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 01487 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Manager" to mean the County's Director, Internal Services



Department, or the duly authorized representative designated to manage the Contract.

- c) The word "Contractor" to mean Arthur J. Gallagher Risk Management Services, Inc., and its permitted successors.
- d) The word "Days" to mean calendar days.
- e) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- f) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Project Manager.
- g) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- h) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- i) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- j) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## **ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 42 of the Agreement, 2) the Scope of Services (Appendix A), 3) the County's RFP No. 01487 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in the Contract are for convenience

only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

#### **ARTICLE 4. NATURE OF THE AGREEMENT**

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. CONTRACT TERM AND RENEWAL**

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the sixtieth (60) month thereafter. The County, at its sole discretion, may renew this Contract for one (1) additional five (5) year period subject to approval by the Board of County Commissioners. The County may extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by registered or certified mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County  
Attention: Baunie McConnell Phone: (305) 375-3583  
E-mail: [Baunie.McConnell@miamidade.gov](mailto:Baunie.McConnell@miamidade.gov)

and,

b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Strategic Procurement Division  
Attention: Chief Procurement Officer  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Phone: (305) 375-4900  
E-mail: [Namita.Uppal@miamidade.gov](mailto:Namita.Uppal@miamidade.gov)

**(2) To the Contractor**

Arthur J. Gallagher Risk Management Services, Inc.  
Attention: Tony Abella, Jr  
Area Vice President  
9155 S. Dadeland Blvd, Suite 1112  
Miami, FL 33156  
Phone: (305) 639-3108  
E-mail: [Tony\\_Abellajr@ajg.com](mailto:Tony_Abellajr@ajg.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with Appendix B – Form1-Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract,

which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

#### **ARTICLE 8. PRICING**

Prices shall remain firm and fixed for the initial term of the Contract, including any extensions thereof, as indicated in Appendix B – Form1-Price Schedule. Any agreed upon price increase by the County shall be capped at 2% of the previous annual broker fee. However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

#### **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
ISD/Risk Management, Property & Casualty Unit  
111 N.W. 1<sup>st</sup> Street, Suite 2340  
Miami, Florida 33128-1989  
Attention: Property & Casualty Manager

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. General Liability Insurance in an amount not less than \$1,000,000 per occurrence. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$2,000,000 per claim. Deductible per claim not to exceed ten percent (10%) of the limit of liability.

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County  
111 N.W. 1<sup>st</sup> Street  
Suite 2340  
Miami, Florida 33128-1974**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals

and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. The County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

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

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 14. DISPUTE RESOLUTION PROCEDURE**

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply

with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. **Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.**
- d) In the event of such dispute, the Parties authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.
- f) This Article will survive the termination or expiration of this Agreement.

#### **ARTICLE 15. MUTUAL OBLIGATION**

Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

#### **ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such



records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

#### **ARTICLE 17. AUDITS**

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five (5) business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

#### **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a Subcontractor if it appears to the County that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION AND SUSPENSION OF WORK**

- a) This Agreement may be terminated for cause by the County for reasons including, but not limited to, the following: (i) the Contractor commits an Event of Default (as defined below in Article 24); or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a)(ii) above, the County

- may, in its sole discretion, also terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorneys' fees.
- d) The foregoing notwithstanding, if the Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, the Contractor may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- e) In the event that the County exercises its right to terminate this Agreement under this Article 23, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
- i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
  - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

#### **ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default is a material breach of this Agreement by the Contractor, including but not limited to:
- i. the Contractor has not delivered Deliverables on a timely basis;
  - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;

- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
  - vii. the Contractor has failed in the representation of any warranties stated herein; or
  - viii. the Contractor fails to comply with Article 39 below.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement and/or a material breach of this Agreement; and
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, terminating this Agreement or taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County terminates this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE**

If the County determines, in its sole discretion, that an Event of Default has occurred, the County may, but is not required to, so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County deems appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. If the County chooses to issue a Default Notice, the Default Notice shall specify the date the Contractor shall discontinue the Services and stop work (i.e., the Effective Termination Date).

**ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

**ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorneys' fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that

it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

#### **ARTICLE 28. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) In the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

#### **ARTICLE 29. PROPRIETARY INFORMATION**

As a political subdivision of the state of Florida, Miami-Dade County is subject to Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any

computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

### **ARTICLE 30. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under

common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## **ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST**

### **a) Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- |   |   |
|---|---|
| <p><b>1. Miami-Dade County Ownership Disclosure Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>                    | <p><b>7. Miami-Dade County Code of Business Ethics Affidavit</b><br/>(Sections 2-8.1(i), 2-11.1(b) (1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)</p> |
| <p><b>2. Miami-Dade County Employment Disclosure Affidavit</b> (Section 2.8.1(d) (2) of the Code of Miami-Dade County)</p>                | <p><b>8. Miami-Dade County Family Leave Affidavit</b><br/>(Article V of Chapter 11 of the Code of Miami-Dade County)</p>  |
| <p><b>3. Miami-Dade County Employment Drug-free Workplace Certification</b><br/>(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> | <p><b>9. Miami-Dade County Living Wage Affidavit</b><br/>(Section 2-8.9 of the Code of Miami-Dade County)</p>   |
| <p><b>4. Miami-Dade County Disability and Nondiscrimination Affidavit</b><br/>(Section 2-8.1.5 of the Code of Miami-Dade County)</p>      | <p><b>10. Miami-Dade County Domestic Leave and Reporting Affidavit</b> (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p>                             |
| <p><b>5. Miami-Dade County Debarment Disclosure Affidavit</b><br/>(Section 10.38 of the Code of Miami-Dade County)</p>                    | <p><b>11. Miami-Dade County E-Verify Affidavit</b><br/>(Executive Order 11-116)</p>   |
| <p><b>6. Miami-Dade County Vendor Obligation to County Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>             | <p><b>12. Miami-Dade County Pay Parity Affidavit</b><br/>(Resolution R-1072-17)</p>   |
|   | <p><b>13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit</b></p>   |



(Resolution R-919-18)

**14. Subcontracting Practices**

(Section 2-8.8 of the Code of Miami-Dade County)

**15. Subcontractor/Supplier Listing**

(Section 2-8.1 of the Code of Miami-Dade County)

**16. Form W-9 and 147c Letter**

(as required by the Internal Revenue Service)

**17. FEIN Number or Social Security Number**

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

**18. Office of the Inspector General**

(Section 2-1076 of the Code of Miami-Dade County)

**19. Small Business Enterprises**

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

**20. Antitrust Laws**

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

**b) Conflict of Interest and Code of Ethics**

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

**ARTICLE 32. INSPECTOR GENERAL REVIEWS****Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

As applicable, the Contractor shall comply, subject to applicable professional standards, with the provisions of any and all applicable federal, state and County orders, statutes, ordinances, rules and regulations which may pertain to the Services, including, but not limited to:

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, and implementing regulations at 41 C.F.R. part 60.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by the Department of Labor regulations (29 CFR Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."

- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- o) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, the Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### **ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

#### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with

any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

The County may terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the state of Florida. Venue shall be Miami-Dade County.

**ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)****a) User Access Fee**

Pursuant to Section 2-8.10 of the Code of Miami-Dade County, this Contract is subject to a user access fee under the County User Access Program ("UAP") in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from the solicitation referenced on the first page of this Contract, and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Contractor participation in this invoice reduction portion of the UAP is mandatory.

**b) Joint Purchase**

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within three (3) business days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

**ARTICLE 40. FIRST SOURCE HIRING REFERRAL PROGRAM (“FSHRP”)**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board (“SFWIB”), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

**ARTICLE 41. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Contractor shall comply with the Public Records Laws of the state of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida’s public records laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, [ISD-VSS@MIAMIDADE.GOV](mailto:ISD-VSS@MIAMIDADE.GOV), 111 NW 1<sup>st</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**

**ARTICLE 42. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date that the Agreement is executed below.

Contractor

Miami-Dade County

By: Zeb Holt  
Name: Zeb Holt  
Title: Regional EVP - Florida  
Date: 09/04/2020  
Attest: April Anne Board  
Corporate Secretary/Notary Public

By: \_\_\_\_\_  
Name: Carlos A. Gimenez  
Title: Mayor  
Date: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form  
and legal sufficiency



Angela [Signature]  
Assistant County Attorney



**APPENDIX A – SCOPE OF SERVICES****GROUP B**  
**PUBLIC HOUSING AGENCY PROPERTY INSURANCE PROGRAM****Background**

The County requires an insurance broker to provide brokerage and related services in procuring the County's Public Housing Agency Property (PHAPI) Insurance Programs. The Contractor shall provide broker services that will assist the County in managing the PHAPI Program. The County intends to purchase the broker services for the PHAP Program on a flat fee basis for the term of the contract and any extensions and renewals thereof.

**Public Housing Agency Property Insurance Program**

**2.1** The PHAPI Program includes coverage for real and personal property for various housing agency properties and facilities located throughout the County.

**2.2 Minimum Qualification Requirement**

The minimum qualification requirement for this Group is that the Contractor's key personnel assigned to this contract shall be licensed insurance agents for General Lines (Property & Casualty) in the state of Florida, as of the proposal due date. The Contractor shall provide copies of the state of Florida insurance agent license for all key personnel proposed to provide services during the term of the contract, including extensions and renewals thereof.

**Note:** Licenses shall be maintained for the duration of the contract and any extensions and renewals thereof.

**2.3 Services To Be Provided**

The Contractor shall:

2.3.1 Design specifications and market the PHAPI Program for coverage when instructed to do so by RMD, including assisting RMD in the completion of all applications, documents and gathering data which may be requested by insurance companies.

2.3.2 Suggest alternative risk financing vehicles to reduce the County's cost of risk.

2.3.3 Perform catastrophic (CAT) modeling analysis (if requested) to assist the County in determining appropriate deductible/self-insurance levels and insurance limits.

2.3.4 Analyze proposals received from various insurance companies and other parties, negotiate changes for the benefit of the County and verify the reasonableness of the price for the coverage provided.

2.3.5 Provide the County with a summary of various PHAPI Program options, including but not limited to: limits, coverage, retention levels, terms, conditions and payment options.

2.3.6 Make recommendations to the County as to the most advantageous PHAPI Program which provides the highest level of coverage at the best possible price to meet the County's needs and objectives.

- 2.3.7 Provide analysis and recommendations as to the most cost effective means for addressing the County's property exposures.
- 2.3.8 Represent the County in all negotiations with insurers, underwriters and other parties with regard to the PHAPI Program.
- 2.3.9 When instructed to do so by RMD, administer the placement of coverage and provide original binders, policies and endorsements as required in the timetable specified by RMD.
- 2.3.10 Provide extensive review of binders and policies including verification of conformity to specifications. Request any necessary endorsements/changes/revisions that may be required.
- 2.3.11 Prepare an easy to read chart of the PHAPI Program including limits, pricing and coverages by layer.
- 2.3.12 Provide binders and policies in a single 3-ring binder with a table of contents, evidencing layers and limits in the PHAPI Program in an easy to follow format.
- 2.3.13 Provide insurance coverage summaries/descriptions as requested by RMD.
- 2.3.14 Ensure that insurance policies are placed with reputable and financially responsible insurers, including keeping RMD informed of any changes in rating of the insurers and making recommendations should ratings change during the policy term.
- 2.3.15 Continually evaluate the PHAPI Program and recommend coverage changes and improvements to provide the highest level of coverage at the least possible cost to the County.
- 2.3.16 Oversee and coordinate all relevant services performed by insurance companies/underwriters or any service agencies arranged for PHAPI Program related issues and concerns.
- 2.3.17 Perform administrative and clerical services relative to account management, including but not limited to, issuance of certificates of insurance, verification of the accuracy of bills, audits and all premium adjustments.
- 2.3.18 Submit all premiums/payments to carriers and other parties. All payments/premiums will be made to the Contractor.
- 2.3.19 Assign an account executive to this PHAPI Program who will be responsible for communication with RMD and who, along with any other team members assigned, must be available on a daily basis to RMD for advice and consultation on Program related issues and concerns.
- 2.3.20 Assist the County in maintaining and updating schedules of values and schedules of insurance by developing and maintaining a comprehensive database of all

information provided. Amend schedules, analyze changes provided and compare new information to the existing schedule.

- 2.3.21 Attend meetings related to this PHAPI Program with RMD staff and other parties, as requested.
- 2.3.22 Review any related insurance company audits for accuracy.
- 2.3.23 Act as a liaison between RMD and the carriers to resolve claims.
- 2.3.24 Advise the County, when requested, on coverage application to specific claims.
- 2.3.25 Maintain accurate claim data on an accident date basis and provide the County with status reports, in the form and frequency agreed upon with the County.
- 2.3.26 Assign a claim adjustment firm to handle claims for all layers of coverage.
- 2.3.27 Promptly file all claims with all applicable insurers.
- 2.3.28 Coordinate meetings with claims adjusters and the County.
- 2.3.29 Attend claims meetings as requested by the County.
- 2.3.30 Negotiate prompt settlement of claims with adjusters/underwriters.
- 2.3.31 Assist RMD by providing insurance related documentation in respect to any Federal Emergency Management Agency (FEMA) claims.
- 2.3.32 Consult with the County regarding the proposed counsel the selected Broker plans to use, if necessary, with any claim. (The County reserves the right to approve legal counsel prior to appointment.)
- 2.3.33 Identify additional locations to be covered by National Flood Insurance Program (NFIP) policies.
- 2.3.34 Request flood zone determinations for any new policies.
- 2.3.35 Complete application for coverage with pertinent information including photographs of location to be covered.
- 2.3.36 Provide NFIP quotation to RMD.
- 2.3.37 Send application for NFIP coverage for issuance of policy.
- 2.3.38 Submit payment to NFIP carrier. All payments will be made to selected broker.
- 2.3.39 Review all NFIP policies for accuracy.
- 2.3.40 Maintain schedules for NFIP policies. Re-quote individual policies if necessary to ensure consistency with values on the master schedule.

- 2.3.41 Furnish continuing advice and counsel to the County.
- 2.3.42 Provide other services as related to the Scope of Services upon request by the RMD.
- 2.3.43 Provide insurance documentation and be available to answer the Trust Agreement Consultant's questions.
- 2.3.44 Be available to provide advice and consultations as requested by the RMD.

**APPENDIX B- FORM 1- PRICE SCHEDULE  
PUBLIC HOUSING AGENCY PROPERTY INSURANCE PROGRAM**

**A. Price**

The flat, fixed-price shown below is the annual fee for providing all tasks and deliverables outlined in this Solicitation as stated in Section 2, Scope of Services- Public Housing Agency Property Insurance Program.

Description	Proposed Price
Year 1-Annual Broker's Fee for Broker Services for the Public Housing Agency Property Insurance Program.	\$36,050
Year 2-Annual Broker's Fee for Broker Services for the Public Housing Agency Property Insurance Program	\$37,132
Year 3-Annual Broker's Fee for Broker Services for the Public Housing Agency Property Insurance Program	\$38,245
Year 4-Annual Broker's Fee for Broker Services for the Public Housing Agency Property Insurance Program	\$39, 393
Year 5-Annual Broker's Fee for Broker Services for the Public Housing Agency Property Insurance Program	\$40,575

**Negotiated Commission Rates: not included in the above annual broker compensation**

Commission Rate for Builders Risk Policy - 7%

Commission Rate for Wholesaler- 5%

## Notes:

- a) The flat, fixed-price shall include full compensation for labor, material, all out-of-pocket expenses, such as travel, per diem, and miscellaneous costs and fees, which shall be incorporated in this Price Schedule, as they will not be reimbursed separately by the County.
- b) The broker fee shall be guaranteed for the initial term of the contract and any extension periods; and shall include all costs necessary to provide the services as described in this Solicitation.
- c) The price for the Public Housing Agency Property Insurance Program premium shall be reviewed and approved by the County each year of the Contract. The County shall pay the premium for the Public Housing Agency Property Insurance Program annually to the selected Proposer for transmittal to the insurance carriers. The broker fee and insurance premium shall be due annually at the insurance program inception date.
- d) The Broker shall not accept contingent commissions, for the placement of the Public Housing Agency Property Insurance Program. The County reserves the right to negotiate the final terms and conditions as may be in the best interest of the County.
- e) **NFIP**- FEMA establishes rates for these policies and they cannot be changed or rebated. Broker may accept negotiated commissions on policies placed through the NFIP program.
- f) Broker commissions for the administration of the **NFIP** policies and/or the placement of builders risk policies and any wholesaler commissions are in addition to the annual brokerage fees and shall not be included as part of the annual compensation calculation.

AIRPORT LIABILITY INSURANCE PROGRAM  
Contract No. RFP 01487C

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ by and between Arthur J. Gallagher Risk Management Services, Inc. a corporation organized and existing under the laws of the State of Illinois, having its principal office at 2850 Golf Road, Rolling Meadows, IL 60008 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the state of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County") (collectively, the "Parties"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide insurance broker services and related services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 01487 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 24, 2020, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such brokerage and related services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 01487 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Manager" to mean the County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

- c) The word "Contractor" to mean Arthur J. Gallagher Risk Management Services, Inc., and its permitted successors.
- d) The word "Days" to mean calendar days.
- e) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- f) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Project Manager.
- g) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- h) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- i) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- j) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## **ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 45 of the Agreement, 2) the Scope of Services (Appendix A), 3) the County's RFP No. 01487 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in the Contract are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor

affect the meaning thereof.

#### **ARTICLE 4. NATURE OF THE AGREEMENT**

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. CONTRACT TERM AND RENEWAL**

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the sixtieth (60) month thereafter. The County, at its sole discretion, may renew this Contract for one (1) additional five (5) year period subject to approval by the Board of County Commissioners. The County may extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.



**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by registered or certified mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

- a) to the Project Manager:

Miami-Dade County  
Attention: Baunie McConnell  
Phone: (305) 375-3583  
E-mail: [Baunie.McConnell@miamidade.gov](mailto:Baunie.McConnell@miamidade.gov)

and,

- b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Strategic Procurement Division  
Attention: Chief Procurement Officer  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Phone: (305) 375-4900  
E-mail: [Namita.Uppal@miamidade.gov](mailto:Namita.Uppal@miamidade.gov)

**(2) To the Contractor**

Arthur J. Gallagher Risk Management Services, Inc.  
Attention: Ilene Abella  
Area Vice President  
9155 S. Dadeland Blvd, Suite 1112  
Miami, FL 33156  
Phone: (305) 639-3106  
E-mail: [Ilene\\_Abella@ajg.com](mailto:Ilene_Abella@ajg.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with Appendix B – Form1-Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract,

which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

#### **ARTICLE 8. PRICING**

Prices shall remain firm and fixed for the initial term of the Contract, including any extensions thereof, as indicated in Appendix B – Form1-Price Schedule. . Any agreed upon price increase by the County shall be capped at 2% of the previous annual broker fee. However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

#### **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
ISD/Risk Management, Property & Casualty Unit  
111 N.W. 1<sup>st</sup> Street, Suite 2340  
Miami, Florida 33128-1989  
Attention: Property & Casualty Manager

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. General Liability Insurance in an amount not less than \$1,000,000 per occurrence. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$2,000,000 per claim. Deductible per claim not to exceed ten percent (10%) of the limit of liability.

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of

Florida Department of Financial Services and are members of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County  
111 N.W. 1<sup>st</sup> Street  
Suite 2340  
Miami, Florida 33128-1974**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. The County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

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

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 14. DISPUTE RESOLUTION PROCEDURE**

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages,

compensation and losses.

- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. **Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.**
- d) In the event of such dispute, the Parties authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.
- f) This Article will survive the termination or expiration of this Agreement.

#### **ARTICLE 15. MUTUAL OBLIGATION**

Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

**ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

**ARTICLE 17. AUDITS**

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five (5) business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

**ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a Subcontractor if it appears to the County that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION AND SUSPENSION OF WORK**

- a) This Agreement may be terminated for cause by the County for reasons including, but not limited to, the following: (i) the Contractor commits an Event of Default (as defined below in Article 24); or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.



- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a)(ii) above, the County may, in its sole discretion, also terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorneys' fees.
- d) The foregoing notwithstanding, if the Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, the Contractor may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- e) In the event that the County exercises its right to terminate this Agreement under this Article 23, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
- i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
  - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

#### **ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default is a material breach of this Agreement by the Contractor, including but not limited to:
- i. the Contractor has not delivered Deliverables on a timely basis;

- ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
  - vii. the Contractor has failed in the representation of any warranties stated herein; or
  - viii. the Contractor fails to comply with Article 39 below.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement and/or a material breach of this Agreement; and
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, terminating this Agreement or taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County terminates this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE**

If the County determines, in its sole discretion, that an Event of Default has occurred, the County may, but is not required to, so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County deems appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. If the County chooses to issue a Default Notice, the Default Notice shall specify the date the Contractor shall discontinue the Services and stop work (i.e., the Effective Termination Date).

**ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

**ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorneys' fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that

it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

#### **ARTICLE 28. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) In the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

#### **ARTICLE 29. PROPRIETARY INFORMATION**

As a political subdivision of the state of Florida, Miami-Dade County is subject to Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any

computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

### **ARTICLE 30. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under

common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## **ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST**

### **a) Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- |   |   |
|---|---|
| <p><b>1. Miami-Dade County Ownership Disclosure Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>                    | <p><b>7. Miami-Dade County Code of Business Ethics Affidavit</b><br/>(Sections 2-8.1(i), 2-11.1(b) (1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)</p> |
| <p><b>2. Miami-Dade County Employment Disclosure Affidavit</b> (Section 2.8.1(d) (2) of the Code of Miami-Dade County)</p>                | <p><b>8. Miami-Dade County Family Leave Affidavit</b><br/>(Article V of Chapter 11 of the Code of Miami-Dade County)</p>  |
| <p><b>3. Miami-Dade County Employment Drug-free Workplace Certification</b><br/>(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> | <p><b>9. Miami-Dade County Living Wage Affidavit</b><br/>(Section 2-8.9 of the Code of Miami-Dade County)</p>   |
| <p><b>4. Miami-Dade County Disability and Nondiscrimination Affidavit</b><br/>(Section 2-8.1.5 of the Code of Miami-Dade County)</p>      | <p><b>10. Miami-Dade County Domestic Leave and Reporting Affidavit</b> (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p>                             |
| <p><b>5. Miami-Dade County Debarment Disclosure Affidavit</b><br/>(Section 10.38 of the Code of Miami-Dade County)</p>                    | <p><b>11. Miami-Dade County E-Verify Affidavit</b><br/>(Executive Order 11-116)</p>   |
| <p><b>6. Miami-Dade County Vendor Obligation to County Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>             | <p><b>12. Miami-Dade County Pay Parity Affidavit</b><br/>(Resolution R-1072-17)</p>   |

**13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**

*(Resolution R-919-18)*

**14. Subcontracting Practices**

*(Section 2-8.8 of the Code of Miami-Dade County)*

**15. Subcontractor/Supplier Listing**

*(Section 2-8.1 of the Code of Miami-Dade County)*

**16. Form W-9 and 147c Letter**

*(as required by the Internal Revenue Service)*

**17. FEIN Number or Social Security Number**

*In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:*

- *Identification of individual account records*
- *To make payments to individual/Contractor for goods and services provided to Miami-Dade County*
- *Tax reporting purposes*
- *To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records*

**18. Office of the Inspector General**

*(Section 2-1076 of the Code of Miami-Dade County)*

**19. Small Business Enterprises**

*The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.*

**20. Antitrust Laws**

*By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.*

**b) Conflict of Interest and Code of Ethics**

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

**ARTICLE 32. INSPECTOR GENERAL REVIEWS****Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.



Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

As applicable, the Contractor shall comply, subject to applicable professional standards, with the provisions of any and all applicable federal, state and County orders, statutes, ordinances, rules and regulations which may pertain to the Services, including, but not limited to:

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, and implementing regulations at 41 C.F.R. part 60.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by the Department of Labor regulations (29 CFR Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."

- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- o) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, the Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### **ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

#### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this

Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

The County may terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the state of Florida. Venue shall be Miami-Dade County.

**ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)****a) User Access Fee**

Pursuant to Section 2-8.10 of the Code of Miami-Dade County, this Contract is subject to a user access fee under the County User Access Program ("UAP") in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from the solicitation referenced on the first page of this Contract, and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Contractor participation in this invoice reduction portion of the UAP is mandatory.

**b) Joint Purchase**

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within three (3) business days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

**ARTICLE 40. FIRST SOURCE HIRING REFERRAL PROGRAM (“FSHRP”)**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board (“SFWIB”), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

**ARTICLE 41. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Contractor shall comply with the Public Records Laws of the state of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida’s public records laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, [ISD-VSS@MIAMIDADE.GOV](mailto:ISD-VSS@MIAMIDADE.GOV), 111 NW 1<sup>ST</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**

**ARTICLE 42. MIAMI-DADE COUNTY-US SOCCER FEDERATION 2026 WORLD CUP**

The terms of this agreement are subordinate to the terms of the Airport Agreement submitted by

Miami-Dade County to the United States Soccer Federation on February 21, 2018. In carrying out its obligations under this Contract, the Concessionaire shall not take or omit any action which is inconsistent with, or in derogation of, the County's obligations under the Airport Agreement. Where the Concessionaire's rights or obligations under this Agreement are in conflict with the County's obligations under the Airport Agreement, and upon notice by the County to the Concessionaire, the terms of this Agreement shall be deemed conformed to the County's obligations under the Airport Agreement. Where such conformance would cause a material change in this Contract, Concessionaire shall have the right, upon written notice to the County within five (5) days of receipt of notice of such a conflict, to terminate this Agreement for convenience; in such termination, the Management shall have no cause of action for money damages of any kind, including but not limited to direct damages, or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the event that the Agreement does not elect to terminate this Agreement within the time specified herein, this Agreement shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same. Agreement between Miami-Dade County and U.S. Soccer Federation may be downloaded at:

[www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180129min.pdf](http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180129min.pdf).

**ARTICLE 43 FAA SPECIAL PROVISIONS – MIAMI-DADE AVIATION DEPARTMENT CONTRACTS:**

A. Compliance with Nondiscrimination Requirements

During the performance of this contract, the selected Proposer, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will

- permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- A. Withholding payments to the Contractor under the contract until the Contractor complies and/or
  - B. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor, or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- A) All contracts and subcontracts that result from solicitation RFP No. 01487 incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.  
  
The [Contractor | consultant] has full responsibility to monitor compliance to the referenced statute or regulation. The [Contractor | consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division
  - B) All contracts and subcontracts that result from solicitation RFP No. 01487 incorporate by reference the requirements of 29 CFR Part

1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**ARTICLE 44. SPECIAL SECURITY REQUIREMENTS AT MIAMI-DADE AVIATION DEPARTMENT:**

- A. The Miami-Dade County Aviation Department operates under strict security regulations. These regulations involve the issuance of special identification (ID) cards after performing complete police background checks of individuals who are employed, hired or who are required to frequently (more than 5 times within a 90-day period) enter the restricted areas of the Miami International Airport. These ID cards are required for access and are issued by the Miami-Dade Aviation Department at the current cost of \$38.00 for fingerprints and \$20.00 for the ID badge, per applicant per year. Therefore, the selected Proposer(s) under this group shall obtain and pay for ID cards for each of his /her employees and/or agents who will be frequently visiting or performing services at the Miami International Airport restricted areas. For more information concerning ID cards, for appointment and to pick-up package you may contact the Miami-Dade Aviation Department ID Section at 305.876.7188.

The Contractor must follow all security procedures required of workers at MDAD. This will include his will include submitting and successfully passing a Criminal History Record's Check (CHRC) and Security Threat Assessment (STA) for SIDA/SECURE/STERILE badge issuance. Or successfully passing vetting for pass issuance for all employees, a special driving course for those who operate a vehicle on the aircraft operating area (AOA), additional badges to work within the US Customs service area and may include bonding for a Customs I.D.

For Customs ID, call 305-345-6528 or email [miamiairportsecurityoffice@cbp.dhs.gov](mailto:miamiairportsecurityoffice@cbp.dhs.gov) for information. Contractors are responsible for all costs incurred in obtaining security badges. Security clearance must be obtained prior to start of contract.

- B. When performing work at the County's Aviation Department, the Contractor(s) shall acquire approval to access the Airside Operations Area (AOA). Contractor(s) shall gain access to the AOA and shall comply with all AOA drivers training requirements and endorsements for each employee assigned to MIA. (Note: Section - Insurance requirements)



- C. Contractor(s) and their sub-contractors working at Miami Dade Aviation Department (MIA) are subject to complying with ISO 14001 regulations regarding Environmental responsibility. Contractor(s) will receive training and familiarization about the ISO 14001 protocol from the Miami Dade Aviation Department.

**ARTICLE 45. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date that the Agreement is executed below.

Contractor

Miami-Dade County

By: Zeb Holt  
 Name: Zeb Holt  
 Title: Regional EVP - Florida  
 Date: 09/04/2020  
 Attest: April Hannah Dowd  
 Corporate Secretary/Notary Public

By: \_\_\_\_\_  
 Name: Carlos A. Gimenez  
 Title: Mayor  
 Date: \_\_\_\_\_  
 Attest: \_\_\_\_\_  
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency



Angela [Signature]

Assistant County Attorney

**APPENDIX A – SCOPE OF SERVICES****GROUP C**  
**AIRPORT LIABILITY INSURANCE PROGRAM****Background**

Miami-Dade County is seeking proposals for the selection of an insurance broker to provide brokerage and related services for an Airport Liability Insurance (“ALI”) Program for the five airports owned and operated by Miami-Dade County. The five County airports are: Miami International Airport, Opa-Locka Executive Airport, Tamiami Executive Airport, Homestead General Aviation Airport and the Dade Collier Training and Transition Airport and all premises incidental to the aviation operations. The County intends to purchase the broker services for the ALI Program on a flat fee basis for the term of the contract and any extensions and renewals thereof.

**2.1 Minimum Qualification Requirement**

The minimum qualification requirement for this Solicitation is that the Contractor's key personnel assigned to this contract shall be licensed insurance agents for General Lines (Property & Casualty) in the state of Florida, as of the proposal due date. The Contractor shall provide copies of the state of Florida insurance agent license for all key personnel proposed to provide services during the term of the contract, including extensions and renewals thereof.

**Note:** Licenses shall be maintained for the duration of the contract and any extensions and renewals thereof.

**Services To Be Provided**

The Contractor shall:

- 2.1.1 Design specifications for the ALI Program and market the ALI Program for coverage when instructed to do so by RMD, including assisting RMD in the completion of all applications, documents and gathering data which may be requested by insurance companies.
- 2.1.2 Suggest alternative risk financing vehicles to reduce the County's cost of risk.
- 2.1.3 Analyze proposals received from various insurance companies and other parties, negotiate changes for the benefit of the County and verify the reasonableness of the price for the coverage provided.
- 2.1.4 Provide the County with a summary of various ALI Program options, including but not limited to: limits, coverage, retention levels, terms, conditions and payment options.
- 2.1.5 Make recommendations to the County as to the most advantageous ALI Program which provides the highest level of coverage at the best possible price to meet the County's needs and objectives.
- 2.1.6 Provide analysis and recommendations as to the most cost effective means for addressing the County's airport liability exposures.

- 2.1.7 Represent the County in all negotiations with insurers, underwriters and other parties with regard to the ALI Program.
- 2.1.8 When instructed to do so by RMD, administer the placement of coverage and provide original binders, policies and endorsement as required in the timetable specified by RMD.
- 2.1.9 Provide extensive review of binders and policies including verification of conformity to specifications. Request any necessary endorsements/changes/revisions that may be required.
- 2.1.10 Provide insurance coverage summaries/descriptions as requested by RMD.
- 2.1.11 Ensure that insurance policies are placed with reputable (based on insurance rating among other criteria) and financially responsible insurers, including keeping RMD informed of any changes in rating of the insurers and making recommendations should ratings change during the policy term.
- 2.1.12 Continually evaluate the ALI Program and recommend coverage changes and improvements to provide the highest level of coverage at the least possible cost to the County.
- 2.1.13 Oversee and coordinate all relevant services performed by insurance companies/underwriters or any service agencies arranged for ALI Program related issues and concerns.
- 2.1.14 Perform administrative and clerical services relative to account management, including but not limited to, issuance of certificates of insurance, verification of the accuracy of bills, audits and all premium adjustments.
- 2.1.15 Submit all premiums/payments to carriers and other parties. All payments/premiums will be made to the Contractor.
- 2.1.16 Assign an account executive to this ALI Program who will be responsible for communication with RMD and who, along with any other team members assigned, must be available on a daily basis to RMD for advice and consultation on ALI Program related issues and concerns.
- 2.1.17 Attend meetings related to the ALI Program with RMD staff and other parties, as requested.
- 2.1.18 Review any related insurance company audits for accuracy.
- 2.1.19 Review various insurance publications and provide RMD with copies of articles applicable to aviation/airport liabilities.
- 2.1.20 Provide RMD with aviation market trends on a regular basis.
- 2.1.21 Coordinate claims meetings with RMD staff and a representative of the underwriters.

- 2.1.22 Act as a liaison between RMD and the carriers to resolve claims.
- 2.1.23 Advise the County, when requested, on coverage application to specific claims.
- 2.1.24 Consult with the County regarding the proposed claims counsel the selected Broker plans to use, if necessary with any claim. (The County reserves the right to approve legal counsel prior to appointment).
- 2.1.25 Review loss runs monthly and notify RMD of any anticipated problems.
- 2.1.26 Act as a liaison between any loss control professionals and the County relating to this ALI Program.
- 2.1.27 Attend quarterly meetings with Miami-Dade Aviation Department (MDAD) and their Trust Agreement Consultant in connection with the annual Trust report, prepared pursuant to the Trust Agreement under which airport properties are financed.
- 2.1.28 Provide insurance documentation and be available to answer the Trust Agreement Consultant's questions and respond to the applicable portion of the Trust report.
- 2.1.29 Be available for to provide advice and consultations as requested by the RMD.
- 2.1.30 Provide other services as related to the Scope of Services upon request by the RMD.

<b>APPENDIX B-FORM 1, PRICE SCHEDULE - AIRPORT LIABILITY INSURANCE PROGRAM</b>
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**A. Price**

The flat, fixed-price shown below is the annual fee for providing all tasks and deliverables outlined in this Solicitation as stated in Section 2, Scope of Services- Airport Liability Insurance Program.

Description	Proposed Price
Year 1-Annual Broker's Fee for Broker Services for the Airport Liability Insurance Program.	\$25, 750
Year 2-Annual Broker's Fee for Broker Services for the Airport Liability Insurance Program.	\$26, 523
Year 3-Annual Broker's Fee for Broker Services for the Airport Liability Insurance Program.	\$27, 318
Year 4-Annual Broker's Fee for Broker Services for the Airport Liability Insurance Program.	\$28, 138
Year 5-Annual Broker's Fee for Broker Services for the Airport Liability Insurance Program.	\$28, 982

**Negotiated Commission Rates: not included in the above annual broker compensation**

Commission Rate for Wholesaler- 8%

## Notes:

- a) The flat, fixed-price shall include full compensation for labor, material, all out-of-pocket expenses, such as travel, per diem, and miscellaneous costs and fees, which shall be incorporated in this Price Schedule, as they will not be reimbursed separately by the County.
- b) The broker fee shall be guaranteed for the initial term of the contract and any extension periods; and shall include all costs necessary to provide the services as described in this Solicitation.
- c) The price for the Airport Liability Insurance Program premium shall be reviewed and approved by the County each year of the Contract. The County shall pay the premium for the Airport Liability Insurance Program annually to the Contractor for transmittal to the insurance carriers. The broker fee and insurance premium shall be due annually at the insurance program inception date.
- d) The Broker shall not accept commissions, to include contingent commissions, for the placement of the Airport Liability Insurance Program. The County reserves the right to negotiate the final terms and conditions as may be in the best interest of the County.