



# MEMORANDUM

Agenda Item No. 7(O)(1)(A)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

DATE: July 27, 2004

FROM: George M. Burgess  
County Manager

SUBJECT: Request for Approval to  
Execute Supplemental Agreement No. 2,  
Contract No. 271, for Naming Rights  
Consulting Assistance for the South  
Miami- Dade Cultural Center

## RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the County Manager to execute the attached Supplemental Agreement, presented in substantially completed form, with The Superlative Group, Inc. (Superlative) to provide consulting services in the marketing and negotiation of corporate sponsorship involving the naming rights for the South Miami-Dade Cultural Center.

## BACKGROUND

On June 5, 2001, the Board approved the issuance of a contract with Superlative to obtain consulting services to develop a corporate sponsorship program for Miami-Dade County. Phase I of the contract required the consultant to develop an inventory and valuation of County assets, a marketing strategy, and to provide sponsorship policy guidance. Superlative has completed this work, which was previously transmitted to the Board. As part of our contract, the County retained the right to utilize the consultant to provide assistance in soliciting and negotiating other corporate sponsorships. The Board was advised that we would return with a supplemental agreement if we chose to exercise this option.

The South Miami-Dade Cultural Center has been developed as a key component of the "Moss Plan" for revitalizing the South Miami-Dade area. The project is conceived as a multidisciplinary center for the arts, and will serve as a showcase for the performing arts. Its 1,000 seat state-of-the art theater will include a fly tower, orchestra pit, front of house spaces (box office, lobby, restrooms, concessions, etc.), and back of house support spaces (dressing rooms, storage and work areas, administrative offices, etc.).

The facility has been conceptualized as a cultural "village" or "campus," taking into account the existing cultural facilities and related commercial activities in the area (e.g., the South Miami-Dade Regional Library and the Cutler Ridge Mall). This cultural village concept will help coordinate the Center's evolution with neighboring public and private sector development. It will encourage joint programming and marketing and will serve as a more powerful catalyst for the continued revitalization of the South Miami-Dade area. The Center is designed to be a truly unique facility in the Southeastern United States and one that will welcome people of all backgrounds and economic means.

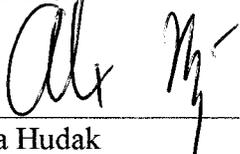
Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners  
Page 2

Developing a mutually beneficial partnership with a corporate sponsor for naming rights requires flexibility and familiarity with the sponsorship industry. Traditional governmental procurement approaches are not well suited to the sponsorship world. I believe that the use of an outside agent with specialized knowledge of the corporate and philanthropic marketplace, such as Superlative, will increase the likelihood of successfully securing a naming rights agreement prior to completion of construction on the Center, as well as maximize the potential benefits to the County. The County presently uses agents in a similar capacity to procure certain of its insurance policies, wherein specialized knowledge of the industry is required. Superlative will work in close coordination with the Department of Cultural Affairs and the Department will manage the work under this Supplemental Agreement.

In accordance with the provisions of this Supplemental Agreement, Superlative's compensation for the execution of a naming rights sales campaign is limited to a \$5,000 per month retainer for 12 months. The Supplemental Agreement also allows the County to exercise an option at its discretion to retain Superlative for up to an additional 12 months, paying a monthly retainer amount of no more than \$5,000. The funds needed to pay the retainer will be covered by the Department of Cultural Affairs' approved capital budget for this project. Superlative will receive a ten (10%) percent commission rate on the total value of the partnership over the span of time the sponsorship payments are made to the County. The Office of Strategic Business Management (OSBM) has performed research to determine the range of commission rates charged on naming rights deals. OSBM is satisfied that the 10% commission proposed under this supplemental agreement is reasonable and on the low end of the commission market range. In addition to its retainer and commission, Superlative may receive a maximum reimbursement of \$15,000 for out-of-pocket expenses for the life of this Supplemental Agreement. This amount is an allocation from the \$53,000 aggregate out-of-pocket expenses authorized under Contract No. 271, and will be administered in conformance with state law.

Miami-Dade County is attempting to follow in the footsteps of several other communities who have successfully used corporate sponsorship agreements to generate additional revenue. We have the opportunity to realize significant additional revenue from both existing assets and new assets currently in the construction or planning phases. The Performance Improvement Division of the Office of Strategic Business Management is actively developing flexible tools to help attract corporate sponsors. I look forward to bringing the Board several additional sponsorship opportunities in the near future, and to gaining your support for using dynamic approaches to establish these agreements.

Attachment



---

Alina Hudak  
Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

**DATE:** July 27, 2004

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No. 7(O)(1)(A)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

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

Agenda Item No. 7(0)(1)(A)  
7-27-04

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

RESOLUTION AUTHORIZING EXECUTION OF A SUPPLEMENTAL AGREEMENT WITH THE SUPERLATIVE GROUP, INC., TO OBTAIN CONSULTING SERVICES IN CONNECTION WITH THE COUNTY'S SPONSORSHIP PROGRAM, AUTHORIZING THE COUNTY MANAGER TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN CONTRACT NO. 271 S.A. NO. 2

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 this Board approves the issuance of a supplemental agreement to The Superlative Group, Inc., in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and any other rights contained therein.

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:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 27th day of July, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency.



Hugo Benitez

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

# MIAMI-DADE COUNTY, FLORIDA

## SUPPLEMENTAL AGREEMENT NO. 2

Contract Number: **271 - executed June 15, 2001; R-629-01**

Contract Title: **Corporate Sponsorship Program**

Contractor: **The Superlative Group  
2706 Franklin Boulevard  
Cleveland, OH 44113**

### I. INTRODUCTION

In accordance with the above referenced Contract Number and Title (hereinafter "Contract"), this Supplemental Agreement No. 2, when properly executed, becomes a part of the County's Contract No. 271 and incorporates the following:

The County has elected and The Superlative Group (Superlative or the Contractor) has accepted the option, as stated in Article 7 of the Contract, to provide to the County technical assistance in securing a sponsorship agreement for the naming rights to the South Miami-Dade Cultural Center (the Center) scheduled to be under construction in 2004 in Miami, Florida.

Superlative shall assist the County, and specifically the Department of Cultural Affairs (CUA), in its efforts to secure naming rights for the Center. As part of the services offered, and as further defined below, Superlative shall assist in the development of a marketing approach and of any documentation that may be necessary, as well as assisting in the evaluation of potential sponsors, and in contract negotiations.

Superlative will be authorized to solicit the corporate and philanthropic marketplace in an effort to obtain a naming rights partnership between the County and the sponsor that best suits the County's requirements and that yields the highest financial return to the County.

6

## II. SCOPE OF SERVICE

### A. Principal Tasks

The Superlative Group shall provide assistance to Miami-Dade County through the Department of Cultural Affairs (CUA) with regard to the following Tasks:

#### 1. **Work with the County to Develop a Sponsorship Marketing Approach and Related Documents**

- a. Work with CUA to develop an overall project work plan, including key milestones and target dates.
- b. Dialog with CUA to develop the content and format of the Monthly Reports that Superlative will submit to CUA.
- c. Develop an understanding of the project, its cultural goals, and the surrounding community by interviewing appropriate individuals including community leaders and CUA.
- d. Develop sponsorship requirements in cooperation with CUA. This may include, but is not limited to, document preparation, data gathering and marketing materials as required.
- e. Build the benefits package to position the Center attractively to corporate and philanthropic interests.
- f. Jointly with CUA, develop the minimum criteria (value to the County as well as other considerations) that potential sponsorship offers must meet in order to be considered.
- g. Develop evaluation benchmarks jointly with CUA to compare all offers received by the County.

#### 2. **Market the Opportunity to Potential Sponsors**

- a. Identify the optimal means to inform potential respondents of the solicitation proposal.
- b. Use Superlative's active membership in advocacy and trade associations as well as information from databases such as Hoover's and Factiva to research and present to CUA new opportunities and emerging concepts in the area of naming rights partnerships.
- c. Promote the attractiveness of the Center and of a naming rights agreement with the County to the corporate and philanthropic marketplace.
- d. Identify regional, national, and international companies and individuals that are pre-qualified through research and via Superlative's and the

County's contact networks in an open, collaborative, and inclusive process.

- e. Circulate information on the sponsorship opportunity to the corporate and philanthropic marketplace, and work with CUA as its development "arm" to negotiate a naming rights partnership with the most suitable corporate citizen or philanthropic partner. Provide wide market exposure of the naming rights opportunity to prospective companies and individuals through multiple media (such as, but not limited to, mass circulation publications, 24/7 website, and targeted mailing).
- f. Advise the County on the optimal timing for executing the various phases of the naming rights marketing campaign (considering all relevant factors including, but not limited to, the corporate "selling season", construction milestones, Board and Commission calendars, etc.).

### **3. Work with County Staff to Select Top Proposals**

- a. Analyze proposals received from various potential sponsors, negotiate changes for the benefit of the County, and verify the economic benefits of the proposals.
- b. Perform research necessary to determine the financial soundness and stability of prospective sponsors.
- c. Provide the County with a summary of various naming rights proposals.
- d. Make recommendations to the County as to the most advantageous naming rights proposal from among those that meet the County's stated requirements and objectives.

### **4. Assist County in Negotiations with Selected Sponsor**

- a. Represent the County (along with County negotiating team members) in all negotiations with prospective sponsors or donors. The negotiating team will include mutually agreed upon representatives from Superlative and the County.

### **B. Activities Related to Tasks 1 through 4:**

- a. Provide qualified and experienced staff and specify a designated team leader. Changes or additions to staff or resources on this project shall be made with CUA's pre-approval. Team members assigned must be available on a timely basis to CUA for advice and consultation on project-related issues and concerns.
- b. Perform updates to the project work plan at least one time per month.
- c. Deliver Monthly Reports to the County (in both hard copy and electronic format) within seven business days after month end outlining Superlative's



efforts, providing an updated version of the project work plan, and any other information as agreed with CUA.

- d. Forward to the County in a timely manner all project data received by Superlative.
- e. Provide information summaries/descriptions as requested by CUA.
- f. Perform administrative and clerical services related to this naming rights project.
- g. Attend meetings related to this naming rights project with CUA staff and other parties, as requested.
- h. Review all project documents and correspondence for accuracy.
- i. Furnish continuing advice and counsel to the County until completion of contract negotiations.
- j. Provide other related services (including, but not limited to, marketing materials) as requested by CUA.

### **III. TIMETABLE, KEY PERSONNEL AND COMPENSATION**

#### **A. Anticipated Start Date**

Groundbreaking and the start of construction for the Center are currently scheduled for late Summer 2004. The County anticipates that work on the tasks in the Supplemental Agreement would begin in July 2004. Superlative shall start work upon receiving a written notice to proceed from CUA. The County may, at any time, suspend work under this Supplemental Agreement without penalty.

#### **B. Proposed Timetable and Key Personnel**

The proposed Timetable is listed below. As one of its first activities under this Supplemental Agreement, Superlative will work with CUA to develop a detailed work plan. Appendix A to this Supplemental Agreement contains brief bios for key Superlative personnel.

<b>Miami-Dade County South Miami-Dade Cultural Center Naming Rights Proposed Schedule and Timetable</b>		
<i>Project Requirements</i>	<i>Personnel</i>	<i>Timetable*</i>
Develop & Implement Strategy	Lund, Hicks	45 – 90 days
Create Sales Collateral Materials	Hicks, Lund	30 – 60 days
Develop Proposals	Hicks, Lund	Throughout Term
Sales Implementation	Hicks, Lund	Throughout Term
Negotiations	Gallagher, Lund, Hicks	Throughout Term
Presentation to Board of County Commissioners & Staff	Lund, Hicks, Gallagher	Throughout Term

### **C. Compensation**

Superlative will be compensated for tasks performed under this Supplemental Agreement in accordance with the Price Schedule contained in Appendix B.

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.

All terms, covenants and conditions of the original Contract and Supplemental Agreement No. 1 shall remain in full force and effect, except to the extent herein amended.

### **IV. GENERAL**

Article 7, first sentence of Contract 271 is revised to read "At the end of Phase 1 and during the time the Contractor is completing three Scopes of Work, it will be the County's option whether and how to proceed with optional corporate sponsorship agreements".

Supplemental Agreement No. 2  
Contract No. 271  
Page 6 of 10

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement No. 2 to County Contract No. 271 effective as of the date first herein above set forth.

Contractor

Miami-Dade County

By: *L. Christopher Lund*  
Name: L. CHRISTOPHER LUND  
Title: VICE PRESIDENT MUNICIPAL MKTB  
Date: May 25, 2004  
Attest: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Clerk of the Board

Stamp Corporate Seal

Approved as to form  
and legal sufficiency

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

**Appendix A:  
Key Personnel**

***Myles Gallagher***  
***President***

A sales and marketing leader with 15 years of experience in the sports world, Myles Gallagher opened his full service agency, The Superlative Group, Inc. in 1994.

Mr. Gallagher successfully brokered a 30-year, \$75-million Naming Rights sponsorship of the Cincinnati Reds Great American Ball Park, set to open in 2003. While under contract with the Reds, Superlative established a (then) Major League Baseball record when selling out 57 Luxury Suites in the new ballpark in just 37 days.

A visionary in the collegiate marketing world, Mr. Gallagher convinced a small, private school, Xavier University in Cincinnati, Ohio, to put a naming rights package before a prospective University donor and produced the largest naming rights deal of its kind for a 10,000-seat, on-campus arena (The Cintas Center).

Before starting Superlative, Mr. Gallagher played a key role in Premium Seating and Sponsorship sales with the Cleveland Indians during their transition from Cleveland Municipal Stadium to Jacobs Field in the early 90s.

Mr. Gallagher founded Superlative's Municipal Marketing Group when municipalities began requesting his help with their marketing programs beyond stadium marketing. He developed an approach to Municipal Marketing that examines all municipal departments and organizes a city's marketing assets to bring focus to its marketing programs.

Mr. Gallagher also served at International Management Group (IMG), responsible for driver endorsements and team representation, as well as the sales and marketing of Motorsports events. Prior to IMG, Gallagher served as the youngest brand manager in the tire industry while at Dunlop Tire Corporation.

Mr. Gallagher is a 1984 graduate of John Carroll University. His extensive community service work includes active roles with Cristo Rey Jesuit High School in Chicago, Students In Free Enterprise (SIFE), St. Edward High School (OH) and Cornerstone Schools (MI). In addition to establishing a scholarship fund in the name of his late father with his alma mater, Mr. Gallagher also supports Bernie Kosar Charities and The United Way.

**L. Christopher Lund, CPA, MBA**  
**Vice President, Municipal Marketing**

Prior to joining The Superlative Group, Inc. Chris Lund served 13 years at IMG, the oldest and largest sports management company in the world. He served as Vice President, Corporate Finance responsible for its Worldwide Tennis Division. In that capacity Mr. Lund was the lead financial executive in the development, financing, construction and management of the \$70 million Indian Wells Tennis Garden (IWTG), a 16,000-seat, 33 suite stadium and related facility in Indian Wells, CA. This facility opened in March of 2000 and is home to the Pacific Life Open, the sixth largest tennis event in the world. Mr. Lund has extensive experience in rights/royalties contract economics and negotiations.

Mr. Lund worked closely with county and municipal government on environmental, construction, safety and other public policy matters, to keep the Indian Wells project on schedule. He also was instrumental in acquiring over \$3 million in monetary and infrastructure benefits from Riverside County and in negotiating a \$2.5 million naming rights contract for the IWTG, all of which was paid upfront.

Mr. Lund also served as IMG's Vice President of Administration and founded its worldwide internal audit function, a scope that included 60 offices in 25 countries.

Prior to serving at IMG, Mr. Lund served as CFO of the Qua Automotive Group, an \$88 million, five location, and 12-franchise dealership group in Cleveland, Ohio. Prior to his experience with Qua, Mr. Lund served five years at Ernst & Young (previously Ernst & Whinney), supervising audits of both Fortune 500 and small business clients.

Mr. Lund holds an MBA from Case Western Reserve University's Weatherhead School of Management (1999), a BBA in Accounting from St. Bonaventure University (1980), and a CPA certificate in the State of Ohio (1983). Mr. Lund currently serves as the lead volunteer for a United Way initiative called GenerationNext Leadership Cabinet, designed to stimulate young professionals to community service. He is past Board Chair of Project Homeless, an East Cleveland shelter and food distribution center for the homeless.

**Brian Hicks, M. Ed. (Sports Business Administration)  
Manager, Municipal Marketing**

Brian Hicks is responsible for generating new accounts, development of sponsorship partnerships and account management for The *Superlative* Group, Inc.

Mr. Hicks has been responsible for *Superlative's* municipal accounts including Miami-Dade County (FL), the City of Delray Beach (FL), and the City of Tacoma (WA). Mr. Hicks was also the lead sales associate in *Superlative's* successful sale of pouring rights to the Cabarrus Arena & Events Center at the Expo Park in Concord, North Carolina.

Mr. Hicks has held a variety of positions in both professional and collegiate sport prior to joining The *Superlative* Group, Inc. Mr. Hicks began in Wilmington, NC with the Seattle Mariners (MLB) Class "AA" affiliate, where he performed many duties including sales and marketing. From there, he returned to Lexington, KY, where he spent two years as an Account Executive with the San Jose Sharks (NHL) top minor-league affiliate, The Kentucky Thoroughblades. He gained significant experience in intercollegiate athletic marketing at Xavier University prior to joining *Superlative* and has integrated that training with his understanding of the corporate marketplace to develop comprehensive sponsorship opportunities for some of the nation's leading corporations, including Anheuser-Busch, Delta Air Lines and Pepsi-Cola.

Mr. Hicks holds a B.A. in Sport Management from The University of Kentucky and M. Ed. in Sport Business Administration from Xavier University.

**Appendix B:  
Price Schedule**

**1. Retainer:**

- a. Miami-Dade County will pay Superlative a monthly retainer of \$5,000 for each of 12 months associated with the execution of a naming rights sales campaign. The term of this agreement may be extended per 1.c. below. Retainer payments will cease following negotiation of a signed sponsorship agreement.
- b. Payment will be made upon receipt of an invoice submitted along with each Monthly Report generated by Superlative that is delivered to, and received by, an authorized County representative. Out-of-pocket expenses should be invoiced separately from the monthly retainer (see 3.a). Payment terms are Net 30 from receipt of invoice.
- c. The initial retainer term may be extended at the sole discretion of the County for a term not to exceed an additional 12 months. The monthly retainer amount for any extension period will be mutually agreed upon, but in no case shall exceed \$5,000 per month.

**2. Commission:**

- a. Miami-Dade County will pay Superlative a ten percent (10%) commission rate on the total value of an executed naming rights contract, and will remit Superlative's commission within 30 days of receipt of sponsorship payments.

**3. Expenses:**

- a. Miami-Dade County will reimburse Superlative for expenses not exceeding fifteen thousand dollars (\$15,000) for the life of this Supplemental Agreement. Superlative shall prepare a monthly invoice for all out-of-pocket expenses and submit it along with the Monthly Report. (Note that the retainer fee and out-of-pocket expenses should be invoiced separately.) Payment terms are Net 30 from receipt of invoice.
- b. With respect to travel costs and travel related expenses for the development of naming rights partnerships, Superlative shall adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous costs and fees. The County shall not be liable for any such expenses that have not been approved in advance and in writing by the County. It is anticipated that one to two Superlative executives may make one monthly visit to Miami-Dade County for work on this project.
- c. Miami-Dade County will reimburse Superlative for expenses generated during any extended term and not exceeding an amount to be determined and as agreed to by the County. Payment for the foregoing will be made as in 3.a.

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

Agenda Item No. 6(N)(1)(A)  
6-5-01

REGINA FILE CUNT  
CLERK OF THE BOARD  
OF COUNTY COMMISSIONERS  
DADE COUNTY, FLORIDA

RESOLUTION NO. R-629-01

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE SUPERLATIVE GROUP, INC, TO OBTAIN CONSULTANT SERVICES TO DEVELOP A CORPORATE SPONSORSHIP PROGRAM AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

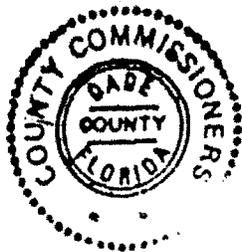
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the selection of The Superlative Group's proposal, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions therein.

The foregoing resolution was offered by Commissioner  
**Katy Sorenson** , who moved its adoption. The motion was  
seconded by Commissioner **Dorrin D. Rolle**  
and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara M. Carey-Shuler	absent	Betty T. Ferguson	aye
Gwen Margolis	aye	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	absent
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Javier D. Souto	absent

The Chairperson thereupon declared the resolution duly  
passed and adopted this 5th day of June, 2001. This resolution  
shall become effective ten (10) days after the date of its  
adoption unless vetoed by the Mayor, and if vetoed, shall become  
effective only upon an override by this Board.



Approved by County Attorney as  
to form and legal sufficiency. HS

BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **KAY SULLIVAN**  
Deputy Clerk

 **MEMORANDUM**

**TO:**

Hon. Chairperson and Members  
Board of County Commissioners

**DATE:** June 5, 2001

**SUBJECT:** Agenda Item No. 6(N)(1)(A)

**FROM:** Robert A. Ginsburg  
County Attorney

Please note any items checked.

- "4-Day Rule" (Applicable if raised)
- 6 weeks required between first reading and public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of private business sector impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires a detailed County Manager's report for public hearing
- "Sunset" provision required
- Legislative findings necessary



# MEMORANDUM

Agenda Item No. 6(N)(1)(A)

**TO:** Honorable Chairperson and Members  
Board of County Commissioners

**DATE:** June 5, 2001

**FROM:** Steve Shiver  
~~County Manager~~

**SUBJECT:** Corporate Sponsorship Program,  
Contract No. 271

It is recommended that the Board of County Commissioners approve the accompanying resolution authorizing the County Manager to execute the attached agreement with The Superlative Group, Inc. for consultant services that will assist the County in developing policy and a program to obtain corporate sponsorships of opportune County assets.

**Contract Title:** Corporate Sponsorship Program

**Contract No.:** 271

**Purpose of the Contract:** This contract provides for services of a consultant experienced in assessing the value of county facilities, programs and activities for potential sponsorships and partnerships. As part of Phase I, the Contractor shall develop an inventory and valuation of sponsorship assets and submit a marketing strategy and list of candidate sponsors. Additionally, the Contractor will submit scopes of work for three candidate sponsorship opportunities. In Phases II and III, should the County elect to pursue a sponsorship program, the Contractor will assist in developing full solicitations and participate in negotiations.

**Competitive Process Utilized:** RFP process

**Term:** Three-year period plus two 1-year options to extend the term at the County's sole discretion.

**Cost:** The cost of this project is \$180,000 for Phase I fees with an additional amount for out-of-pocket expenses. Two subsequent phases are optional and, if exercised, will be paid on a commission basis. Out-of-pocket expenses for all phases are capped at \$53,000 (aggregate).

**Funding Source:** General Fund.

**Using Agency:** Office of Performance Improvement.

**CSBE/MBE Goal:** The Review Committee at its meeting on June 1, 2000 recommended a contract measure of a 15-percent subcontractor goal for a Women's Business Enterprise. This goal will be met by the utilization of Kelley Swofford Roy, Inc.

Honorable Chairperson and Members  
Board of County Commissioners  
Page 2

**Local Preference:**

Local Preference was applied in accordance with applicable ordinances.

**Estimated Contract  
Commencement Date:**

Not less than ten days after adopted by BCC unless vetoed by the Mayor, and after vendor's compliance with proof of insurance and any other requirements to effect award.

(This is the form of Agreement the County anticipates awarding to the selected Proposer)

MIAMI-DADE COUNTY, FLORIDA  
CORPORATE SPONSORSHIP PROGRAM

Contract No. 271

THIS AGREEMENT made and entered into as of this 18<sup>th</sup> day of June, 2001 by and between The Superlative Group, Inc., a corporation organized and existing under the laws of the State of Ohio, having its principal office at 2706 Franklin Boulevard, Cleveland, OH 44113 (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"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Consultant Services that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 271 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 October 23, 2000, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such consultant 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 "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 271 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective, which shall be the date set forth above.

*21*

- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean **The Superlative Group, Inc.** and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) 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 County's Project Manager.
- h) The words "Supplemental Agreement" to mean the supplemental documentation signed by both parties to initiate additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) 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.
- m) 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) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP Number 271 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 these Terms and Conditions 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) 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.
- b) 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.
- c) 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.
- d) 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**



The Contract shall become effective on **the date stated on Page 1** for Professional Services fee and May 22, 2001 for out-of-pocket expenses. The term shall be for the duration of three (3) years from the later of these two dates. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for two (2) additional years on a year-to-year basis.

**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 fax and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Office of Performance Improvement  
Miami-Dade County  
175 N.W. 1<sup>st</sup> Avenue, Suite 2900  
Miami, FL 33128  
Attention: Assistant Director

Phone: (305) 349-6163  
Fax: (305) 349-6190

and,

b) to the Contract Manager:

Department of Procurement Management  
Miami-Dade County  
111 N.W. 1<sup>st</sup> Street, Suite 2350  
Miami, FL 33128-1989  
Attention: Director

Phone: (305) 375-5752  
Fax: (305) 375-2316

(2) To the Contractor

Myles Gallagher  
The *Superlative* Group, Inc.  
2706 Franklin Road  
Cleveland, OH 44113

Phone: (216) 592-9400  
Fax: (216) 592-9405

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 shall perform and present to the County within 12 months of the contract start date the following tasks described in Appendix A, Scope of Services for Phase I:

- (1) Produce list or database with valuations of County assets (Task 1.2) ..... \$100,000
- (2) Develop a County sponsorship policy (Task 1.5)..... \$50,000
- (3) Develop a County sponsorship marketing strategy (Task 1.3)  
and three SOWs..... \$30,000

The Contractor will be compensated \$5,000 per month during the first year of the Contract or until the above three tasks have been completed. The monthly payments will be deducted from the task compensation amounts listed above. Monthly payments are contingent on the Contractor presenting the County monthly reports that will describe the progress made on each task for the reporting period.

24

Payment for the task deliverables is contingent upon successful completion of each task and acceptance by the County. Total compensation for Phase I cannot exceed \$180,000, except for the addition of permitted out-of-pocket expenses. These shall be billed monthly and may not exceed \$53,550 during the three-year term and any extension periods of the contract. The County shall not be liable for travel or miscellaneous expenses that do not follow County guidelines. Authorized travelers shall be reimbursed in accordance with Florida Statutes (CH. 112.061) for lodging and per diem rates as required by Miami-Dade County Administrative Order 6-1 and as described in the Miami-Dade travel procedures, which are updated from time to time.

At the end of Phase I and upon completion of three Statements of Work (SOWs) by the Contractor, it will be the County's option whether and how to proceed with future corporate sponsorship agreements. If it is determined to be in the best interest of the County to utilize a consultant to negotiate individual sponsorship deals, the County will proceed with the Contractor subject to the County's ability to reach a negotiated agreement for each deal and the concurrence of the Board of County Commissioners. The County retains the option during the three-year term of this Contract, and for two 1-year extensions, exercised at the County's sole discretion, to retain the services of the Contractor to develop additional SOWs and provide contract negotiation assistance (Phases II and III as outlined in RFP 271). Compensation for each RFP developed and corporate sponsorship negotiated will be on a commission basis as negotiated; however, in no event shall it exceed 15 percent. Any such work shall be issued via a supplemental agreement to (this) Contract 271.

**ARTICLE 8. PRICING**

Prices shall remain firm and fixed for the term of the Contract including, any option years; however, the Contractor may offer incentive discounts to the County at any time during the contractual term and any extensions thereof.

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

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of receipt bills or other documents reasonably required by the County and shall show the County's contract number. All payments shall be governed by the provision of the Florida Prompt Payment Act. Payment will be made within forty-five (45) days after receipt by the County of properly prepared and documented invoices submitted in accordance with the Florida Prompt Payment Act, and Section 2-8.1.4 of the Miami-Dade County Code.

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

Assistant Director  
Office of Performance Improvement  
Miami-Dade County  
175 N.W. 1<sup>st</sup> Avenue, Suite 2900

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

25

**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.

The Contractor shall, upon County's notification, furnish to the RFP Section, Miami-Dade County, Procurement Management Division, 111 N.W. 1<sup>st</sup> Street, Suite 2350, Miami, Florida 33128-1989, Certificates of Insurance which 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. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$300,000 per occurrence with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published 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 Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty- (30-) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty-(30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

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 fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar 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 twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

**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 ARE THE RESPONSIBILITY 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. Miami-Dade 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. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

- 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 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 obey and follow 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 to this Agreement authorize the County Manager 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 Manager'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 Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager 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 Manager 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 Manager 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 Manager is entitled to exercise discretion or judgement 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 Manager, 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.

#### **ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) 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.

- c) 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.

**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 Contractor agrees that the County or its duly authorized representatives or 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, and shall only address those transactions related to this Agreement.

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 will cause 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 subcontract if it appears to the County that the subcontract 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 Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option 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 FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

- b) The County may, as a further sanction, 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 attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) 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 noncancelable 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
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. portion of the Services completed in accordance with the up to the Effective Termination Date; and
  - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article is subject to audit.

**ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
  - i. the Contractor has not delivered Deliverables on a timely basis.
  - ii. the Contractor has refused or failed, except in case for which an extension of time is

provided, 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.
- 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 time frame 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 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 time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate 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 /TERMINATION**

If an Event of Default occurs, in the determination of the County, the County may 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 with the County 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 shall deem 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. The default notice shall specify the date the Contractor shall discontinue the Services upon the 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, including but not limited to:

- i. lost revenues;
- ii. the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,
- iii. such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

As an alternative to termination, the County may bring any suit or proceeding for specific performance or for an injunction.

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

- a) 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 patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) 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 attorney's 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.
- c) 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).
- d) 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.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

**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) It is understood and agreed that 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 the stipulations of 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 contractors 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 of 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. BUSINESS APPLICATION AND FORMS**

**Business Application/Administrative Fee.** The Contractor shall be a registered vendor with the County – Department of Procurement Management - Bids and Contracts Section, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application, to update the Application file for any changes, and to remit the annual administrative fee, for the duration of this Agreement, including any option years. The administrative fee helps defray the increasing costs of printing, advertising and processing bids, application, related documents and mailings.

Section 2-11.1(d) of Miami-Dade County Code provides that a county employee may not enter into any contract or transact 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 and any such contract, agreement or business engagement entered in violation of this subsection shall render this Agreement voidable. For additional information, please contact the Ethics Commission hot line at (305) 579-2593.

#### **ARTICLE 32. INSPECTOR GENERAL REVIEWS**

##### **Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the Consultant is aware that 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 Consultant 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 Consultant'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 herein, apply to the Consultant, 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 Consultant in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Consultant or any third party.

##### **Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, 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, except as otherwise provided below. 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 Consultant. 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 Administrative Order 3-2; (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 is empowered to retain the services of independent private sector inspectors general (IPSIG) 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 Consultant, its officers, agents and employees, lobbyists, County staff and elected officials to insure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Consultant from the Inspector General or IPSIG retained by the Inspector General, the Consultant 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 Consultant'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.

The ¼-percent fee is applicable to this contract.

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

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- i) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- ii) Miami-Dade County Florida, Department of Business Development Participation

Provisions, as applicable to this Contract.

- iii) Environmental Protection Agency (EPA), as applicable to this Contract.
- iv) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- v) "Conflicts of Interest" and "Employment Discrimination."
- vi) Section 948.15(4), Florida Statutes.
- vii) Miami-Dade County Ordinance No. 93-129 "Debarment".
- viii) Miami-Dade County Ordinance 98-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

Notwithstanding any other provision of this Agreement, 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, religion, color, sex, sexual preference, handicap, marital status, age or national origin, and will take affirmative action to insure that they 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 with the County and signing the Disability Nondiscrimination Affidavit attached hereto (**Appendix B**), 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 grant of this Agreement.

- b) There are no undisclosed persons or entities interested with the Consultant in this Agreement. This Agreement is entered into by the Consultant 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 Consultant 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 Consultant or to the best of the Consultant's knowledge any subcontractor or supplier to the Consultant.
- c) Neither the Consultant nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Consultant shall have an interest which is in conflict with the Consultant'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 Consultant 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 Consultant 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, Consultant shall promptly bring such information to the attention of the County's Project Manager. Consultant shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Consultant receives from the Project Manager in regard to remedying the situation.

**ARTICLE 36. YEAR 2000 COMPATIBILITY**

The Contractor shall be compliant with Year 2000 in all manners that may affect this Agreement.

**ARTICLE 37. 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

40

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 38. WELFARE TO WORK**

This Agreement is subject to Miami-Dade County Resolution No. R-702-98, which requires that an entity that has a contract with the County that results in actual payment of \$500,000 or more, shall contribute to Project Fresh Start, the County's welfare to work initiative, based on the following scale:

- (i) If the entity has a contract with the County that results in actual payment of an amount between \$500,000 to \$1,000,000, then the entity shall contribute \$5,000 to Project Fresh Start;
- ii) If the entity has a contract with the County that results in actual payment of an amount between \$1,000,001 to \$5,000,000, then the entity shall contribute \$10,000 to Project Fresh Start;
- (iii) If the entity has a contract with the County that results in actual payment of an amount between \$5,000,001 to \$10,000,000, then the entity shall contribute \$20,000 to Project Fresh Start;
- (iv) If the entity has a contract with the County that results in actual payment of an amount over \$10,000,000, then the entity shall contribute \$25,000 to Project Fresh Start. An entity may request a waiver of the requirements of the resolution from the Board of County Commissioners if it can demonstrate that five percent (5%) of its work force consists of individuals who reside in Miami-Dade County and who have lost or who will lose cash assistance benefits (formerly Aid to Families with Dependent Children or "AFDC") as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The contribution funds collected pursuant to this resolution shall be used to support Project Fresh Start, the County's welfare-to-work initiative.

Note: Project Fresh Start has been abated by the County for fiscal year 2000-2001 by action of the Miami-Dade Board of County Commissioners. The Board reserves the right to reinstate this Program in the future; if it does, the County will advise the selected Proposer of the impact, if any, such action may have on any contracts previously issued by the County.

**ARTICLE 39. 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.

**ARTICLE 40. BANKRUPTCY**

The County reserves the right to 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.

41

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Contractor

Miami-Dade County

\*By:

*[Signature of Myles C. Gallagher]*

By:

*[Signature of George Burgess]*

Name: Myles C. Gallagher

Name: George Burgess

Title: President

Title: Asst. County Mgr.

Date: 04/05/01

Date: July 13, 2001

Attest:

*[Signature of Corporate Secretary]*  
Corporate Secretary

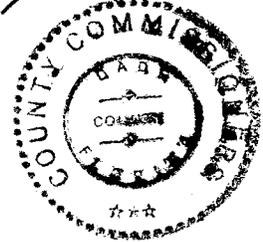
Attest:

*[Signature of Clerk of the Board]*  
Clerk of the Board

Corporate Seal

Approved as to form and legal sufficiency

*[Signature of Assistant County Attorney]*  
Assistant County Attorney



\*Requires the signature of President of Contractor. If other than the President, this Contract shall be accompanied by a letter authorizing the contracting signing authority.

**Appendix A**

**SECTION 2.0 - SCOPE OF SERVICES**

**2.1 INTRODUCTION**

Miami-Dade County (the County), through the Office of Performance Improvement, requests the services of a consultant to assist it in assessing and potentially developing a sponsorship program. Corporate sponsorship programs are an innovative approach to enlisting private support for public programs. A growing number of local communities use sponsorships to raise revenues and/or receive in-kind support from private corporations. Jurisdictions such as the City of San Diego and Volusia County have established multi-million-dollar sponsorships with soft drink companies. These arrangements may include fees for marketing rights, exclusive vending arrangements, signage, naming rights, event sponsorships, etc. Sponsors may also provide in-kind goods or services to the government or the local community. Nationwide research revealed that communities have established sponsorship arrangements with communications and transportation companies, health care and insurance providers, and various other entities.

This RFP outlines the three-phased approach the County will pursue in considering a program. In Phase I, the selected Proposer shall create an inventory of assets (County programs, projects, facilities, etc.) suitable for private support. At a minimum, the inventory shall identify: an estimated value to the County of potential sponsorship support, identification of the types of firms that may be interested in sponsorship, and a listing of any issues, legal or otherwise, that should be considered for each asset. Additionally, in Phase I, the selected Proposer shall develop an overall strategy for eliciting private support for County programs and activities. Phases II and III are optional, exercisable by the County at its sole discretion. Phase II will involve the selected Proposer in developing sponsorship/partnership solicitations for the County. Phase III uses the selected Proposer in contract negotiations on sponsorship deals. The selected Proposer must be prepared to start work immediately upon contract award.

**2.2 BACKGROUND**

Corporate sponsorships are being solicited to help support current and future County-government activities, facilities, projects, and programs.

**2.3 OBJECTIVES**

The selected Proposer shall contribute to the achievement of the County's objectives by:

1. Compiling an inventory of potential sponsorship assets;
2. Developing evaluation methods for assessing potential sponsorship projects' value, additional benefits and drawbacks;
3. Researching potential sponsors and avenues for attracting them;
4. Educating staff and the community on the value of corporate sponsorships as an alternative source of support for a wide range of County programs and facilities
5. Developing a unified County strategy for corporate sponsorship matters.

**2.4 REQUIRED SERVICES**

The services to be provided by the selected Proposer are outlined below. Any contract issued as a result of this RFP will be for a three-year period, with options to renew for two additional one-year periods at the sole discretion of the County.

43

This solicitation outlines three phases. Phase I is required, while Phases II and III are exercisable solely at the County's option. In **Phase I**, the selected Proposer shall review County programs, projects, facilities, etc. to assess what may attract corporate sponsorships. Subsequently, the Proposer shall develop a sponsorship strategy for these assets. Under **Phase II** (optional), the selected Proposer shall assist the County in preparing RFPs to solicit corporate sponsors. Under **Phase 3** (optional), the selected Proposer shall promote the County before corporate sponsors and assist the County in negotiating contracts.

Specifically, the selected Proposer shall provide the services outlined below.

**Phase I Evaluation of County Assets**

- 1.1 Identify County assets (individual programs, projects, facilities, etc.) for potential sponsorship opportunities.
- 1.2 Develop a detailed database of County assets that will, at a minimum, provide an estimated value for each asset to potential private partners; also, identify any limitations, legal or otherwise, on those assets.
- 1.3 Develop a County sponsorship marketing strategy for its assets, recommending the best approach to maximizing financial, in-kind, and other benefits to the County; the strategy should prioritize projects, or suggest innovative ways to bundle assets, to attract sponsors.
- 1.4 On an as needed basis, present sponsorship strategy findings and recommendations to the Efficiency and Competition Commission and the Board of County Commissioners.
- 1.5 Recommend standards that may be used in developing a County sponsorship policy.

**Phase II Soliciting Corporate Sponsors (optional)**

Provide assistance to the County in developing solicitations for private sponsorships.

- 2.1 Assist in the development of Request(s) for Proposals to solicit sponsors.
- 2.2 Identify the optimal means of informing potential respondents of the Request(s) for Proposals.
- 2.3 Prepare reports and presentations on the County program to the Board of County Commissioners, community groups, and other forums, as directed by the county program manager.

**Phase III Soliciting Corporate Sponsors (optional)**

- 3.1 Promote the County to the private sponsor community.
- 3.2 Assist the County in negotiating sponsorship agreements.

APPENDIX B

DISABILITY NONDISCRIMINATION AFFIDAVIT

CONTRACT REFERENCE:

NAME OF FIRM, CORPORATION, OR ORGANIZATION: The Superlative Group, Inc.

AUTHORIZED AGENT COMPLETING AFFIDAVIT: Myles C. Gallagher

POSITION: President PHONE NUMBER: ( 216 ) 592-9400

I, Myles C. Gallagher, being duly first sworn state:

That the above named firm, corporation or organization is in compliance with and agrees to continue to comply with, and assure that any subcontractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

The Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 U.S.C. 12101-12213 and 47 U.S.C. Sections 225 and 611 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private Entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.

The Rehabilitation Act of 1973, 29 U.S.C. Section 794

The Federal Transit Act, as amended 49 U.S.C. Section 1612

The Fair Housing Act as amended, 42 U.S.C. Section 3601-3631

Myles C. Gallagher  
Signature  
Date 04/05/01 4-5-01

SUBSCRIBED AND SWORN TO (or affirmed) before me on APRIL 05, 2001  
(Date)

by MYLES C. GALLAGHER  He/She is personally known to me or has  
(Affiant)

presented \_\_\_\_\_ as identification.  
(Type of Identification)

Joseph M. Mentrek  
(Signature of Notary) \_\_\_\_\_ (Serial Number)

JOSEPH M. MENTREK, ATTORNEY  
(Print or Stamp Name of Notary Public) - State of Ohio \_\_\_\_\_ (Expiration Date)

Notary Public My Commission Has No Expiration Date  
Section 147.03 R.C.

Notary Seal  
(State)

45