

Memorandum



Date: June 3, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 8(O)(1)(B)

From: George M. Burges
County Manager

Subject: Recommendation for Approval to Award Contract Nos. RFQ8264A, RFQ8264B, RFQ8264C and RFQ8264D: Integrated Pest Management Pool

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the referenced award to establish a pool of qualified vendors to provide pest control services.

CONTRACT NOS: RFQ8264A, RFQ8264B, RFQ8264C, and RFQ8264D

CONTRACT TITLE: Integrated Pest Management Pool

DESCRIPTION: To obtain qualified vendors to establish a pool of firms capable of providing integrated pest management services.

TERM: Five years with three, one-year options-to-renew

APPROVAL TO ADVERTISE: January 7, 2008

FISCAL IMPACT: \$3,726,500 for the initial term

MANAGING AGENCY: General Service Administration will support requests to utilize the pool for any County department or agency. The Department of Procurement Management will manage the contracts and the Work Order Proposal Request process.

FUNDING SOURCES: This is a countywide contract available to all departments as authorized in the approved fiscal year budget.

METHOD OF AWARD: An open, competitive Request for Qualifications process was used for this award.

VENDORS RECOMMENDED FOR AWARD:

Hulett Environmental Services (Local)
6601 NW 14th Street
Plantation, FL 33313
Principal: Timothy Hulett

Steritech Brand Protection Services (Local)
6500 NW 12th Avenue, Suite 119
Ft. Lauderdale, FL 33309
Principal: John Whitley

El Toro Exterminator of FL, Inc. (Local)
DBA Toro Pest Management
1460 NW 107th Avenue, Unit 1
Miami, FL 33172
Principal: Renato Perez

Terminix International (Local)
1481 NW 65th Avenue
Plantation, FL 33313
Principal: Thomas Brackett

**VENDORS NOT RECOMMENDED
FOR AWARD:**

Budget Pest Control Services (Local)
2470 NW 140th Street
Opa-Locka, FL 33054

Brandon Services, Inc. (Local)
18782 NW 53rd Avenue
Miami, FL 33055

CONTRACT MEASURES:

The Review Committee of April 11, 2007 recommended a Small Business Enterprise selection factor for this contract.

LIVING WAGE:

The services being provided are not covered under the Living Wage Ordinance.

USER ACCESS PROGRAM:

The 2% User Access Program provision is included. The program discount will be collected for all departments/agencies, except Miami-Dade Aviation Department (MDAD).

LOCAL PREFERENCE:

Applied in accordance with applicable Ordinance, but did not affect the outcome.

PERFORMANCE DATA:

There are no known performance issues for these firms.

COMPLIANCE DATA:

There are no known compliance issues for these firms.

PROJECT MANAGERS:

Jude Plummer, General Services Administration
Michael Garcia and Ivan Valdes, Miami-Dade Aviation

**ESTIMATED CONTRACT
COMMENCEMENT DATE:**

Ten days after date adopted by the Board of County Commissioners, unless vetoed by the Mayor.

BACKGROUND

There are currently three contracts for these services with varying expiration dates. Two were awarded to support all County agencies. The third contract was awarded to service MDAD. The new pool will consolidate these services. The current contracts will be phased out. Establishing a qualified pool of contractors will provide greater flexibility and operational availability in obtaining the services for short-term and long-term assignments. The Evaluation/Selection Committee reviewed the qualification submittals and recommended the four highest ranked firms for inclusion into the pool.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: June 3, 2008

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)(B)

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. 8(O)(1)(B)
6-3-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AGREEMENTS WITH EL TORO EXTERMINATOR OF FL, INC. DBA TORO PEST MANAGEMENT, STERITECH BRAND PROTECTION SERVICES, TERMINIX INTERNATIONAL AND HULETT ENVIRONMENTAL SERVICES TO ESTABLISH A POOL OF QUALIFIED VENDORS TO OBTAIN PEST CONTROL SERVICES, AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENTS 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 NOS. RFQ8264A, RFQ8264B, RFQ8264C AND RFQ8264D

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 El Toro Exterminator of FL, Inc. dba Toro Pest Management, Steritech Brand Protection Services, Terminix International, and Hulett Environmental Services in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or designee 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:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
3rd day of June, 2008. 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.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Richard Seavey

INTEGRATED PEST MANAGEMENT POOL

Contract No. RFQ 8264A

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between El Toro Exterminating of Florida, Inc. DBA Toro Pest Management , a corporation organized and existing under the laws of the State of Florida, having an office at 1460 NW 107th Avenue, Unit I, Miami,FL 33172(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 participate in the County's Integrated Pest Management Pool ("Pool") of pre-qualified firms as a Pool "member", including competing for future requests to provide pest control and related services for Miami-Dade County when projects arise, on a non-exclusive and as needed basis, that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Qualifications (RFQ) No. 8264 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 February 1, 2008 , hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County may desire to procure from the Contractor Pest Control 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:

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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), RFQ No. 8264 and all associated addenda and attachments, the Contractor's Proposal, any subsequent Work Order issued hereto, 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.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the contract.
- d) The word "Contractor" to mean El Toro Exterminating of Florida, inc. DBA Toro Pest Management 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 "Change Order" or "Extra Work" or "Additional Work" resulting in 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 project.
- 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.
- n) The words "Work Order Proposal Request" (WOPR) to mean a solicitation document requesting proposals from Pool members.
- o) The words "Work Order Proposal" to mean a documentation presented by Pool members in response

to a Work Order Proposal Request.

- p) The words "Work Order" to mean an assignment of work issued by the County to a Pool member to perform work specified therein.

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) any Work Order issued as a result of this Agreement, 4) Miami-Dade County's RFQ No. 8264 and any associated addenda and attachments thereof, and 5) 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 identified in any Work Order issued to the Contractor, 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 on the first page of this Agreement and shall be for duration of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners. The County reserves the right to exercise any option to renew with none, all or any number of Pool members at the County's sole discretion.

Work Order Term

Work Orders shall expire as stated on each individual Work Order issued under this Contract, and may extend past the expiration of this Contract. The provisions of any specific Work Order which commences prior to the termination date of this Contract and which will extend beyond said termination date shall survive the expiration or termination hereof.

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 or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) to the Project Manager(all departments except Aviation):
Miami-Dade County
General Services Administration
200 N.W. 1st Street, 1st Floor
Miami, FL 33128
Attention: Mr. Jude Plummer, Pest Control Manager
Phone: (305) 375-3730
Fax: (305) 375-3914

and, for the Aviation Department :

Miami-Dade Aviation Department
Terminal Building Maintenance Section
P.O. Box 025504
Miami, FL 33102-5504
Attention: Mr. Michael Garcia and Mr. Ivan Valdes, Co-Pest control Managers
Phone: (305) 876-7756

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

El Toro Exterminator of Florida, Inc. DBA Toro Pest Management
1460 NW 107th Avenue, Unit I
Miami, FL 33172
Attention: Mr. Alejandro Perez
Phone: (305) 594-4767
Fax: (305) 594-7527
E-mail: Alex@Toropest.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be as stated in the Work Order(s) issued as a result of this Agreement. All Services undertaken by the Contractor before County's approval of this Contract and any subsequent Work Order shall be at the Contractor's risk and expense.

ARTICLE 8. Pricing

Prices for each Work Order shall remain firm and fixed for the term of the Contract, including any option or extension periods, unless otherwise specified in the applicable Work Order issued as a result of this Contract; however, the Contractor may offer incentive discounts which the County may accept. Notwithstanding, the Contractor may request a justified price adjustment (not to exceed 3% of the then current price) ninety days prior to any renewal of the then current Contract term (if the Work Order term runs concurrently with the Contract term) or the Work Order term (if such term does not run concurrently with the Contract term). The County may accept or reject the price adjustment or negotiate a lower price adjustment. The County's rejection of a price adjustment shall not affect the County's right to renew or extend the Contract or Work Order at the then current price.

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 monthly unless another time of payment is established in the applicable Work Order. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that

interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as indicated in the applicable Work Order. The County may at any time designate a different address and/or contact person by giving written notice to the other party. The County may also specify a different mailing address and/or contact person in any individual Work Order.

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 Provider or its employees, agents, servants, partners principals or subcontractors. Provider 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.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 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 Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, 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 \$500,000 combined single limit per occurrence for bodily injury and property damage.

Under no circumstances is the Contractor permitted on the A.O.A. side of the airport without increasing automobile coverage to \$5,000,000. The Contractor will need to obtain this insurance only if awarded a Work Order at the Airport that requires it.

The County reserves the right to request additional insurance requirements at the time the County issues a Work Order Proposal Request.

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.

Notwithstanding the above company rating qualifications, the County reserves the right to accept policies for the Professional Liability Insurance from companies that have alternative qualifications that the County deems acceptable.

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.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

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.

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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. However, such substitution can be implemented immediately with the County's approval.

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 Contractor 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, including any subsequent Work Order, 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 or any subsequent Work Order 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 debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

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 or any subsequent Work Order 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 the applicable Work Order 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 or any subsequent Work Order 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 applicable Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of the

applicable Work Order, and that have been specifically developed for the sole purpose of the applicable 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 or any subsequent Work Order 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 and/or the applicable Work Order 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:

- a) lost revenues;
- b) 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,
- c) such other direct damages.

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

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor 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 acknowledge 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 The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee’s immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County’s Ethic Commission prior to their or their immediate family member’s entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee’s immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline 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 County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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 Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County 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 Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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:

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

- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) 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, sexual preference, 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.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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, handicap, marital status, age or national origin, and will take affirmative action to ensure 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, 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

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Agreement.

- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

ARTICLE 37. BANKRUPTCY

The County 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.

ARTICLE 38. GOVERNING LAW

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

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

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. 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.



MIAMI-DADE COUNTY, FLORIDA

CONTRACT NO. RFQ8264A

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

Contractor

Miami-Dade County

By: Alejandro R. Perez

By: _____

Name: Alejandro Perez

Name: _____

Title: VICE PRESIDENT

Title: _____

Date: 3/7/08

Date: _____

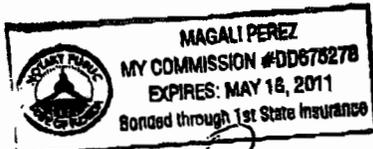
Attest: [Signature]
Corporate Secretary

Attest: _____
Clerk of the Board

Corporate Seal

Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney



Magali Perez

[Signature]

INTEGRATED PEST MANAGEMENT POOL

Contract No. RFQ 8264B

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Steritech Brand Protection Services, a corporation organized and existing under the laws of the State of Georgia, having an office at 6500 NW 12th Avenue, Suite 119, Fort Lauderdale, FL 33309(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 participate in the County's Integrated Pest Management Pool ("Pool") of pre-qualified firms as a Pool "member", including competing for future requests to provide pest control and related services for Miami-Dade County when projects arise, on a non-exclusive and as needed basis, that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Qualifications (RFQ) No. 8264 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 February 8, 2008, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County may desire to procure from the Contractor Pest Control 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), RFQ No. 8264 and all associated addenda and attachments, the Contractor's Proposal, any subsequent Work Order issued hereto, 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.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the contract.
- d) The word "Contractor" to mean Steritech Brand Protection Services 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 "Change Order" or "Extra Work" or "Additional Work" resulting in 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 project.
- 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.
- n) The words "Work Order Proposal Request" (WOPR) to mean a solicitation document requesting proposals from Pool members.
- o) The words "Work Order Proposal" to mean a documentation presented by Pool members in response

to a Work Order Proposal Request.

- p) The words "Work Order" to mean an assignment of work issued by the County to a Pool member to perform work specified therein.

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) any Work Order issued as a result of this Agreement, 4) Miami-Dade County's RFQ No. 8264 and any associated addenda and attachments thereof, and 5) 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 identified in any Work Order issued to the Contractor, 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 on the first page of this Agreement and shall be for duration of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners. The County reserves the right to exercise any option to renew with none, all or any number of Pool members at the County's sole discretion.

Work Order Term

Work Orders shall expire as stated on each individual Work Order issued under this Contract, and may extend past the expiration of this Contract. The provisions of any specific Work Order which commences prior to the termination date of this Contract and which will extend beyond said termination date shall survive the expiration or termination hereof.

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 or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) to the Project Manager(all departments except Aviation):
Miami-Dade County
General Services Administration
200 N.W. 1st Street, 1st Floor
Miami, FL 33128
Attention: Mr. Jude Plummer, Pest Control Manager
Phone: (305) 375-3730
Fax: (305) 375-3914

and, for the Aviation Department :

Miami-Dade Aviation Department
Terminal Building Maintenance Section
P.O. Box 025504
Miami, FL 33102-5504
Attention: Mr. Michael Garcia and Mr. Ivan Valdes, Co-Pest control Managers
Phone: (305) 876-7756

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

Steritech Brand Protection Services
6500 NW 12th Avenue, Suite 119
Fort Lauderdale, FL 33309
Attention: Mr. Paul DiLorenzo
Phone: (954) 689-9286
Fax: (954) 689-9238
E-mail: Paul.DiLorenzo@steritech.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be as stated in the Work Order(s) issued as a result of this Agreement. All Services undertaken by the Contractor before County's approval of this Contract and any subsequent Work Order shall be at the Contractor's risk and expense.

ARTICLE 8. Pricing

Prices for each Work Order shall remain firm and fixed for the term of the Contract, including any option or extension periods, unless otherwise specified in the applicable Work Order issued as a result of this Contract; however, the Contractor may offer incentive discounts which the County may accept. Notwithstanding, the Contractor may request a justified price adjustment (not to exceed 3% of the then current price) ninety days prior to any renewal of the then current Contract term (if the Work Order term runs concurrently with the Contract term) or the Work Order term (if such term does not run concurrently with the Contract term). The County may accept or reject the price adjustment or negotiate a lower price adjustment. The County's rejection of a price adjustment shall not affect the County's right to renew or extend the Contract or Work Order at the then current price.

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 monthly unless another time of payment is established in the applicable Work Order. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that

interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as indicated in the applicable Work Order. The County may at any time designate a different address and/or contact person by giving written notice to the other party. The County may also specify a different mailing address and/or contact person in any individual Work Order.

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 Provider or its employees, agents, servants, partners principals or subcontractors. Provider 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.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 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 Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, 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 \$500,000 combined single limit per occurrence for bodily injury and property damage.

Under no circumstances is the Contractor permitted on the A.O.A. side of the airport without increasing automobile coverage to \$5,000,000. The Contractor will need to obtain this insurance only if awarded a Work Order at the Airport that requires it.

The County reserves the right to request additional insurance requirements at the time the County issues a Work Order Proposal Request.

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.

Notwithstanding the above company rating qualifications, the County reserves the right to accept policies for the Professional Liability Insurance from companies that have alternative qualifications that the County deems acceptable.

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.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

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. However, such substitution can be implemented immediately with the County's approval.

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 Contractor 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, including any subsequent Work Order, 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 or any subsequent Work Order 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 debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

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 or any subsequent Work Order 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 the applicable Work Order 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 or any subsequent Work Order 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 applicable Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of the

applicable Work Order, and that have been specifically developed for the sole purpose of the applicable 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 or any subsequent Work Order 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 and/or the applicable Work Order 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:

- a) lost revenues;
- b) 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,
- c) such other direct damages.

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

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor 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 acknowledge 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 The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline 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 County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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 Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County 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 Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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:

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

- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) 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, sexual preference, 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.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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, handicap, marital status, age or national origin, and will take affirmative action to ensure 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, 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 Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

ARTICLE 37. BANKRUPTCY

The County 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.

ARTICLE 38. GOVERNING LAW

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

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

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. 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.

MIAMI-DADE COUNTY, FLORIDA

CONTRACT NO. RFQ8264B

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

Contractor

Miami-Dade County

By: *Paul D. Lorenzo*

By: _____

Name: *Paul D. Lorenzo*

Name: _____

Title: *Regional Vice President*

Title: _____

Date: *3/7/2008*

Date: _____

Attest: _____
Corporate Secretary

Attest: _____
Clerk of the Board

Corporate Seal

Approved as to form
and legal sufficiency

[Handwritten Signature]

[Handwritten Signature]
Assistant County Attorney



Sworn before me
on 3/7/2008

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Appendix A

1. INTRODUCTION

The Integrated Pest Management (IPM) Program for Miami-Dade County is intended to eliminate indoor populations of domestic rats, mice, cockroaches, ants, silverfish, fleas, spiders and any other arthropod pest not specifically excluded. Pests specifically excluded are birds, snakes, lizards, vertebrates other than commensal rodents, termites, other wood-destroying organisms, mosquitoes and insects that primarily feed on outdoor vegetation and are found within the outside property boundaries of the buildings. The minimal services required for the IPM Program, in general, are detailed in Sections 5 through 8. However, each individual Work Order (see Section 4) will identify the services required therein.

The Contractor should understand the concepts and principles of IPM and have experience with the implementation of IPM programs in industrial, commercial and/or institutional facilities. The Contractor shall provide a plan(s) that will keep facilities insect/pest-free. The County will not permit subcontracting in providing the pest control and management tasks described herein.

The Contractor shall at all times cooperate with the County and coordinate with the County's Project Manager and the Facility Administrator their respective work efforts to most effectively and efficiently perform the Services. Contractor shall comply with applicable laws, ordinances and regulations related to the pest control business; including but not limited to Florida Statutes, Chapter 482, Pest Control in the performance of these services. Regular pest management service shall consist of working with the County's Project Manager and departmental staff to establish an IPM Program with application of least toxic pest control products. Application of pesticides shall be in accordance with Florida Statute 482 and Chapter 5E-14, Entomology-Pest Control Regulations. Pesticides shall be applied only when necessary to destroy a specific target pest which is currently infesting a facility. Should there be any conflict between the Scope of Services and applicable laws, the more stringent requirements shall prevail.

2. MINIMUM QUALIFICATION REQUIREMENT

The minimum qualification requirement is that the Contractor must have a current license issued by the Florida Department of Agriculture and Consumer Services to operate a pest control business for a business location that the Contractor would use to provide services to the County under the Contract.

"Business location" for the purposes of this section shall mean an advertised permanent location in or from which pest control business is solicited, accepted, or conducted (Fla. Statutes, Chapter 482; Pest Control). Note: The County will allow the Contractor to operate from multiple locations as long as each location meets these requirements. Additionally, each Contractor's Service Technician that will provide service to the County shall have an identification card per the Florida Statutes, Chapter 482.071 Licenses.

3. STRUCTURE OF THE POOL

It is the County's intention to establish an IPM Pool with up to up to five Contractors. The Agreement will be supplemented, upon project award, by individual Work Orders specifying project scopes and price and payment information.

Membership in the Pool is a prerequisite for obtaining opportunities to present proposals/bids for projects selected for this Pool. However, there is no guarantee that any or all Pool members will obtain Work Orders issued through this Pool. Selection into a Pool does not guarantee work, and does not provide for exclusive rights by any firm to provide services to the County.

At the County's discretion, members may be dropped from the Pool for lack of participation, which shall include failure over a reasonable time to propose on projects offered through the Pool, poor performance on a WOPR, being in arrears in obligations to the County, and any other reason specified by County policies and

procedures. Contractors must maintain the qualifications of the firm and proposed personnel at a standard consistent and equivalent to the qualification submissions submitted hereto.

4. WORK ORDER PROCESS

When the need arises, the County will prepare a scope of work and provide the Pool members with information regarding the selection process and response requirements. Work Order awards will be made competitively, generally based on quality and/or price. The County may negotiate each Work Order award or may award a Work Order on the basis of initial offers received. The County reserves the right to enter into negotiations with the recommended Pool member. If the County and the recommended Pool member cannot negotiate a successful Work Order, the County may terminate negotiations and begin negotiations with another recommended pool member. Alternatively, the County may at any time perform the services or engage a contractor outside of the pool for these services. The County reserves the right to establish an alternate, streamlined method for awarding Work Orders.

5. GENERAL SERVICES

Any rodent populations found outside of the specified buildings, but within the property line shall be eliminated. Populations of ants within 10 feet of the specified buildings shall also be eliminated. Perimeter spraying will be allowed only in special circumstances when approved by the County's Project Manager. Outside areas of coverage for specified buildings within the County's parks shall be limited to an area within 50 feet of the building for rodent control and within 10 feet of the building for other pests. Areas outside this boundary shall be excluded. Should the need arise for remediation of a fire ant problem, only Contractors licensed under Florida Statute 482 in the category of Lawn and Ornamental Pest Control will be considered to perform these services.

Contractor shall locate and advise the County's Project Manager of indoor fly and mosquito problems. Infestations of drain flies shall be treated by use of a County approved foaming agent or by steam cleaning after an initial cleaning by the facility personnel.

Stinging and biting arthropods such as scorpions and bird mites in the interior of buildings, and colonies of stinging hymenopterous insects such as mud daubers, paper wasps, hornets and honey bees (including "Africanized" honey bees) on interior or exterior building surfaces, within the structural component of the building or in exterior recesses which are only accessible from the outside of the building shall be treated and eliminated. When combs are located on the outside of walls, the Contractor shall remove the dead bees, honey and combs after bee eradication. When such nests are out of reach and a lift is required to provide this service the Contractor shall advise the County and upon approval by the County's Project Manager the Contractor may rent a lift if needed. The rental cost for the lift shall be passed on to the County for reimbursement.

6. REQUIREMENTS AND SERVICES TO BE PROVIDED

Contractor shall provide, at a minimum, the services, as applicable, described herein.

A. PEST MANAGEMENT PLAN AND SERVICE SCHEDULE

After issuance of a Work Order, the Contractor shall conduct a thorough, initial inspection of each building or facility and develop a proposed Pest Management Plan and Service Schedule ("Plan") for each building or facility. Upon approval by the County's Project Manager, the Contractor may submit a single Plan for a group of similar co-located buildings if applicable, or a single Plan for similar buildings within a department if applicable which are located throughout the County. The County's Project Manager shall determine the acceptability of the Plan. Upon approval of each Plan, the Contractor shall deliver one (1) copy of each approved Plan to the County's Project Manager and one (1) copy to the County's designated facility

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administrator for each respective facility. Any proposed subsequent change(s) to the Plan shall be brought to the attention of the respective facility's building administrator and the County's Project Manager, and approved by the County's Project Manager prior to the implementation of the change(s).

1. The Plan shall contain each of the five (5) items listed below. The Plan shall develop and explain the method of pest management in each and every facility or building. The Plan shall:
 - a. Indicate by common name every pest that will be target of or subject to continuous pest monitoring procedures. Indicate monitoring devices that will be employed, such as insect traps, whether they will be baited or unbaited and their replacement cycle. Estimate what proportion of actual service will be spent in inspection or survey.
 - b. Provide a list of equipment, supplies, and pesticides used for pest management, including brand names of rodent bait boxes, insect and rodent trapping devices, pest monitoring devices and any other control devices or equipment to be used in each facility or building.
 - c. List areas, if any, in the facility where the Contractor will use preventive application of liquid, residual pesticides; methods of application to be used; and the brand names of the pesticides.
 - d. Describe structural, sanitary or operational conditions in each facility that promotes pest infestations.
 - e. Describe unusual or special pest management requirements or pest infestations that may be difficult to control or require extraordinary equipment such as ladders, lifting devices, lighting equipment, etc., at each facility.
2. Prior to approval of the Plan by the County's Project Manager, Contractor shall provide for pest management services in all County facilities and buildings awarded. After approval of the Plan by the County's Project Manager, Contractor shall accomplish all work using practices, procedures and operations as established and described in the Plan.

B. PESTICIDES

1. Contractor shall safely use pesticides.
 - a. The Contractor shall not apply any pesticide product or use any application procedure which has not been included in the Plan or specifically approved by the County's Project Manager.
 - b. As a general rule, application of pesticides in any inside or outside area of a building or facility shall not occur unless visual inspection or monitoring indicates the presence of pests in that specific area. Actual specimens of insect pests must be seen and identified before pesticides are applied. Fresh rodent droppings, burrows, rub marks or runways are sufficient to indicate the presence of rodents in an area. Complaints by facility occupants, tenants or affected persons shall be verified by survey or inspection by Contractor's technician prior to pesticide application.
 - c. Preventive pesticide treatments of inside and outside areas where inspections indicate a high potential for insect or rodent infestation are acceptable on a case-by-case basis after approval by the County's Project Manager. Contractor shall indicate in the Plan for a facility specific areas in that facility, potential pest(s) to be managed, pesticides to be used, and methods of application if preventive treatments are justified, all of with are subject to review and approval by the County's Project Manager.

- d. Coordination of pesticide application shall be established with the Facility Administrator of the respective facility. Records of all applications shall be maintained in accordance with the requirements of the contract as a result from this Solicitation.
 - e. All pesticides used in County sites, facilities, vehicles, etc. including busses, rail and mover cars shall be tracked by brand name and use location.
2. All pesticides used by the Contractor shall be registered with the United States Environmental Protection Agency (USEPA) or have appropriate special local need registration. Transport, handling and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable federal, state, and local laws and regulations. Public safety and environmental quality shall be protected at all times. Contractor shall apply only pesticides that have been approved by the County's Project Manager. No pesticide products, containers or dispersal equipment that is the property of the Contractor shall be stored in or on County property.
- a. Service Technicians: If the Contractor's Service Technician applies pesticide in a manner inconsistent with label directions, the Contractor shall notify the County's Project Manager and pursue corrective action acceptable to the County's Project Manager.
 - b. Samples: The County shall receive from the Contractor such samples of chemicals and materials for laboratory analysis as the County may deem necessary. The County reserves the right to inspect storage facilities and examine records and files belonging to Contractors related to its performance of services requested herein during normal business hours by giving reasonable advance notice.
 - c. Ineffective pesticides: When a particular pesticide chemical in use at County facilities has lost its effectiveness (e.g., due to increase in resistance in the target pest population), the Contractor shall replace such ineffective chemical with a more effective pesticide product. An ineffective pesticide is any product that is used repeatedly in an acceptable manner without significant reduction of pest population. The least toxic replacement product shall be selected. Such change of pesticide utilization shall be coordinated with and approved by the County's Project Manager.
3. Insect control: The Contractor shall use non-insecticidal methods of insect control whenever and wherever possible. For example, use portable vacuum cleaners rather than pesticide sprays or dusts; trapping devices rather than pesticide sprays or dusts; sticky traps to guide and evaluate cockroach or ant management procedures; and growth or reproduction regulating products. When it is determined that an insecticidal dust or liquid must be used in order to obtain adequate insect control, Contractor shall employ the least hazardous product, most precise application technique, and minimum quantity of pesticide necessary to achieve control. Contractor shall minimize the use of liquid pesticide applications whenever and wherever possible.
- a. Containerized and other types of bait formulations rather than sprays shall be used for cockroach and ant control to the greatest extent possible. The County considers bait formulations to be the standard pesticide product for typical office space.
 - b. As a general rule, liquid or dust insecticide formulations shall be applied only as crack and crevice treatments with application devices specifically designed or modified for this purpose.
 - c. Application of pesticide liquid, aerosol or dust to or on exposed surfaces and pesticides space sprays (including fogs, mists, and ultra-low volume applications), shall be restricted to unique situations where no alternative measures are practical. Contractor shall obtain the approval of the County's Project Manager prior to any application of pesticide liquid, aerosol, or space spray

treatment to exposed surfaces.

- d. Contractor shall take all necessary precautions to ensure tenant and employee safety, and to ensure the containment of the pesticide to the site of application. No liquid, aerosol, or dust applications of insecticide shall be made while tenant personnel are present.
4. Rodent control: As a general rule, rodent control inside occupied buildings shall be accomplished with trapping devices only. All such devices shall be concealed out of general view and in protected areas so as not to be affected by routine cleaning and other facility operations. For aesthetic and or safety reasons there are times when traps must be placed in trap boxes or otherwise protected. Trapping devices shall be checked daily or on a schedule approved by the County's Project Manager. Trapping shall not be performed during periods when trap maintenance will be delayed by holidays, weekends, etc. in buildings or facilities which are occupied by people during that period. Trapping may continue in buildings that are normally vacant during weekends and holidays. In these buildings traps shall be inspected and serviced by 8:00 a.m. on the first workday after the weekend or holiday. Contractor shall dispose of all trapped rodents and all rodent carcasses in a sanitary and safe manner. Additionally, Contractor shall remove trapped or dead rodents from inside or around County buildings or facilities within 24 hours of being notified by the Facility Administrator or the County's Project Manager. The intent of the rodent control requirements is to eliminate the rodents in the sites as quickly as possible. The Contractor's Service Technician shall inform the Facility Administrator and the County's Project Manager of factors contributing to the infestation both in writing and verbally.
- a. Rodenticide products shall not typically be used inside buildings. In exceptional circumstances, when rodenticides are deemed essential for adequate rodent control inside occupied buildings, the Contractor shall obtain approval of the County's Project Manager prior to making any interior rodenticide treatment.
 - b. All rodenticides, regardless of packaging shall be placed either in locations not accessible to children, pets, wildlife and domestic animals, or in USEPA-approved tamper resistant bait boxes. All rodenticides shall be collected and removed from County facilities after a rodent outbreak has been abated.
 - c. Frequency of bait box servicing shall depend upon the level of rodent infestation. All bait boxes shall be maintained in accordance with USEPA regulations, with an emphasis on the safety of non-target organisms. Contractor shall adhere to the following criteria:
 1. All bait boxes shall be placed out of general view and in locations where they will not be disturbed by routine building operations.
 2. The lids of all bait boxes shall be securely locked or fastened shut.
 3. All bait boxes shall be securely attached or anchored to the floor, ground, wall, or other surface, so that the box cannot be easily picked up or moved.
 4. Bait shall always be placed in the baffle-protected feeding chamber of the box and never in the runway of the box.
 5. All bait boxes shall be labeled with the Contractor's business name and address, and dated of the installation and each servicing. Permanently installed bait stations shall be approved by the County's Project Manager prior to installation. A listing with map locations shall be maintained by Contractor of all permanently installed bait stations. This listing shall be made available to the County's Project Manager upon request.

6. Permanently installed bait stations shall be removed within 30 days of the end of the applicable Work Order. All bait stations not removed with this timeframe may be used or discarded by the County at its discretion.
7. As a general rule, rodenticide application outside buildings shall emphasize the direct treatment of rodent burrows wherever feasible. Contractor shall bait and back-fill all burrows after initial treatment and shall keep a record of the location of these burrows for future reference. The use of tracking powder must be approved by the County's Project Manager.
8. The Contractor shall furnish an adequate supply of materials necessary, at the discretion of County's Project Manager or Facility Administrator, to inspect the interior of all rodent bait stations. These materials may include Allen wrenches to loosen and retighten fasteners on rodent bait boxes, keys to locks on traps, or replacement self-locking plastic ties. Implements to cut plastic ties are not included under this provision.
9. When one or more trapping devices or bait boxes are placed in a facility, the Contractor shall notify the Facility Administrator and the County's Project Manager of the use and location of such devices. When there is an active infestation inside a facility the Contractor shall check on traps daily.
10. The Contractor shall replace damaged or missing bait boxes.

C. RE-INFESTATION

Should re-infestation occur or infestation persist after Contractor has serviced a facility, the Contractor shall provide a re-treatment as requested by the County's Project Manager, Facility Administrator, or Building Manager at no additional cost to the County. Re-treatment service visits by the Contractor shall be performed within twenty-four (24) hours after notification by the Facility Administrator, Building Manager or the County's Project Manager, at no cost to the County.

D. EMERGENCY PEST MANAGEMENT SERVICES

Contractor shall respond promptly and effectively to requests for emergency pest control service as further described below. An emergency is defined for the herein purposes as the sighting of stinging or biting arthropods, or rodents.

1. Contractor shall respond to requests for Emergency Pest Management Services within four hours of the request. (The response time may be extended at the sole option of the County.) In no case shall the approved response time exceed 24 hours. Such response shall comply with all requirements contained herein and in the applicable Work Order. In the event that such services cannot be provided within four hours, the Contractor shall immediately notify the County's Project Manager and the Facility Administrator and indicate an anticipated response time. Emergency Pest Management Services shall be recorded in the Pest Control Work and Inspection Report in the facility pest management file. There shall be no additional cost to the County by the Contractor for any Emergency Pest Management Services provided during normal working hours.
2. In the event that the County's Project Manager or Facility Administrator request that emergency services are to be provided when the Contractor's personnel are normally not available such as night time and other off hours, the Contractor shall respond. The Contractor will be paid in accordance with the fees established in the individual Work Orders.

E. PEST CONTROL PERSONNEL

Contractor shall have a staff of trained and qualified supervisors and technicians to provide these services to the County who are familiar with current IPM practices and able to make effective application of IPM procedures when dealing with actual or potential pest infestations. The individual who the Contractor designates to be its Project Manager for the purposes of any Work Order shall be certified as a commercial pest applicator in the category of General Household Pest and Rodent Control in the State of Florida.

1. The Contractor's Service Technicians shall be certified as commercial pesticide applicators in the category of General Household Pest and Rodent Control or possess an employee identification card under the Contractor's employment and supervision of the Contractor's pest control operator in charge who is certified in the category of General Household Pest and Rodent Control in the State of Florida.
2. Contractor shall employ at least one licensed pest control operator for each of the Contractor's business locations that provides services herein and a sufficient number of Service Technicians to perform the services in a manner satisfactory to the County.
 - a. Pest control operator(s) in charge shall have a working knowledge of any Contract and the applicable Work Order under which services are being provided and the details of each facility serviced.
 - b. The Service Technician(s) shall have the authority to act on matters pertaining to the performance of services required herein. The Service Technician(s) shall assure safety and accomplish the coordination and continuity of the program routine.
 - c. The Service Technician(s) shall coordinate with the Facility Administrator of each facility at the beginning of each visit in order to review the Plan, and to receive information on pest infestations needing abatement action.
 - d. All personnel providing on-site pest management services at County facilities shall carry a copy of their current pest control operator's certificate or employee identification card which has been issued by the Florida Department of Agriculture and Consumer Services.

F. SERVICE TO FACILITIES

1. Services which do not adversely affect tenant health or productivity may be performed during the regular hours of operation of the facility. Pesticides with a high capacity to vaporize either active or inert components shall be applied at night or on weekends when the building is vacated to allow for ventilation before tenants re-enter the facility. When it is necessary to perform work on weekends or outside the regularly scheduled hours set in the Plan, the Contractor shall notify the Facility Administrator and the County's Project Manager at least two (2) working days in advance.
2. When service to unoccupied areas is required, the Contractor shall notify the Facility Administrator at least two (2) working days in advance of the treatment, provide and post all necessary signage, take whatever steps necessary to assure the security of the area treated, and remove signage when the area is safe for re-entry.
3. Contractor shall observe all safety precautions throughout the performance of services. Certain areas within some facilities may require special instructions for Service Technicians entering the facility. Any restrictions associated with these special areas will be explained by the Facility Administrator. These restrictions shall be adhered to and incorporated into the Plan for the facility. Facility area passes will

be supplied by the County on an "as needed" basis.

4. Contractor shall immediately inform the County's Project Manager of any sanitation or structural problems, or operational conditions not remedied within thirty (30) days after the Contractor has reported said problems and/or conditions to the appropriate Facility Administrator.
5. All of the Contractor's personnel performing these services at County facilities shall wear distinctive uniform clothing. The uniform shall have the Contractor's name easily identifiable and affixed in a permanent or semi-permanent manner. The Contractor shall provide personnel protective equipment required for the safe performance of work. Protective clothing, equipment and devices shall, at a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the pesticide products being used and safety equipment used shall comply with instructions provided on the pesticide label.
6. Vehicles used by Contractor to provide these services shall be identified in accordance with state and local regulations.
7. Service technicians assigned to the Port of Miami shall report to assigned personnel at the facilities maintenance office before service ensues and when service at the Port is finished.
8. Full service to facilities shall be monthly at a minimum, or more frequently if needed, to fulfill the requirements for these services.
9. At some facilities, the Service Technician may need to be escorted at all times. These facilities will be identified in the applicable Work Order.
10. Access to some facilities may be granted only to Service Technicians that have passed the necessary security and/or criminal background checks. These facilities will be identified in the applicable Work Order. The Contractor shall obtain these clearances at its expense prior to starting any work.
11. When pest problems arise at a facility that is under treatment, the Contractor shall visit the facility, survey the problem and prepare a report to the Facility Administrator and the County's Project Manager. The report shall describe the nature of the problem, recommend a treatment program and recommend any actions that the County may need to initiate such as additional sanitation procedures.

G. RECORD REPORTING REQUIREMENTS

Contractor shall provide and update the following standard letter size documents and records in a file at each facility site office:

1. The Plan for the facility.
2. The current label for each pesticide that will be used in the facility and the most recent Material Safety Data Sheet (MSDS) for that pesticide. Additional labels and MSDS may be required to meet departmental needs at the request of the County's Project Manager.
3. A log book shall be maintained at each facility. Reports shall be inserted in the log book or kept in a separate file at each facility. Each time the Service Technician visits the facility he/she shall sign into and sign out of the log book.
 - a. For each visit to the facility by the Contractor's Service Technician, the Pest Control Work and Inspection Report ("Inspection Report") shall contain the name of the Service Technician, date of

service, arrival and departure times of the Contractor's Service Technician performing the service; location of infestations; pest(s) found; type of pest management procedure(s) and pest control materials utilized; signature of the Facility Administrator or designee; and a number assigned by the County's Project Manager. To effectively record the arrival and departure time of the Service Technician, the County prefers that the Contractor use an electronic system such as a bar-code.

- b. The Inspection Report shall be at a minimum a three (3) part form. In addition to maintaining a copy at each facility, the Contractor shall keep two (2) copies. The Contractor shall send one (1) copy to the County's Project Manager when so requested within three (3) business days. All forms will be printed and pre-numbered in sequential order.
- c. A separate Inspection Report shall be completed by the Service Technician who responds to complaints or calls for emergency service from the Facility Administrator and/or the County's Project Manager. The Inspection Report shall indicate that the visit is an unscheduled visit to the facility in response to a request for emergency service. Such visits shall be recorded.

H. TRAINING

1. Contractor shall provide periodic training on pest control topics no less frequently than once per quarter, to its personnel providing these pest control services. The training covered under this paragraph shall be in addition to training required by Florida Statute, Chapter 482, Pest Control. The training shall be given by a provider approved in advance by the County's Project Manager. Training on integrated pest management topics is highly desirable.
2. Contractor shall provide to the County's Project Manager a monthly report of the training provided to its personnel that are providing service to County facilities. The report shall include, at a minimum, the date, location, provider, subject of the training, and names and signatures of the personnel providing these services to the County who attended the training.

I. SAFETY

Contractor shall conform to all applicable Federal, State and County regulations, including the Occupational Safety and Health Administration (OSHA), the National Fire Protection Association (NFPA), the American National Standards Institute (ANSI), and other recognized safety standards, codes and practices, while performing the services required herein. Any fines levied by the above mentioned authorities because of inadequacies to comply with these requirements shall be borne by the Contractor. Contractor shall conform to all applicable Confined Space Requirements, 29 CFR 1910.146 including training, monitoring and providing personal protective equipment for those Service Technicians assigned to provide these services to the County.

7. ADDITION/DELETION OF FACILITIES

The County, at its sole discretion, may add or delete facilities to any Work Order. The County may obtain a proposal from and/or negotiate with the Contractor providing services on the applicable Work Order for related facilities, prior to adding a facility. The County may also opt to allow Pool members to compete for the additional facility. Notwithstanding these options, the County reserves the right to obtain the services for additional facilities by another means, including contracting with other contractors not in the Pool.

8. OPTIONAL SERVICES

The County, at its option, may require other related pest control services. If the applicable site where optional services are required is under a pest management program, the County may obtain a proposal from and/or negotiate with the Contractor providing services at the applicable site, prior to adding the optional services. The County at its sole discretion may opt to allow the other Pool members to compete for the optional services. Notwithstanding these options, the County may choose to obtain the optional services by another means, including contracting with other contractors not in the Pool.

INTEGRATED PEST MANAGEMENT POOL

Contract No. RFQ 8264C

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Terminix International, a corporation organized and existing under the laws of the State of Delaware, having an office at 1481 NW 65th Avenue, Plantation, FL 33313(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 participate in the County's Integrated Pest Management Pool ("Pool") of pre-qualified firms as a Pool "member", including competing for future requests to provide pest control and related services for Miami-Dade County when projects arise, on a non-exclusive and as needed basis, that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Qualifications (RFQ) No. 8264 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 January 29, 2008, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County may desire to procure from the Contractor Pest Control 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), RFQ No. 8264 and all associated addenda and attachments, the Contractor's Proposal, any subsequent Work Order issued hereto, 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.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the contract.
- d) The word "Contractor" to mean Terminix International 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 "Change Order" or "Extra Work" or "Additional Work" resulting in 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 project.
- 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.
- n) The words "Work Order Proposal Request" (WOPR) to mean a solicitation document requesting proposals from Pool members.
- o) The words "Work Order Proposal" to mean a documentation presented by Pool members in response to a Work Order Proposal Request.

- p) The words "Work Order" to mean an assignment of work issued by the County to a Pool member to perform work specified therein.

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) any Work Order issued as a result of this Agreement, 4) Miami-Dade County's RFQ No. 8264 and any associated addenda and attachments thereof, and 5) 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 identified in any Work Order issued to the Contractor, 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 on the first page of this Agreement and shall be for duration of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners. The County reserves the right to exercise any option to renew with none, all or any number of Pool members at the County's sole discretion.

Work Order Term

Work Orders shall expire as stated on each individual Work Order issued under this Contract, and may extend past the expiration of this Contract. The provisions of any specific Work Order which commences prior to the termination date of this Contract and which will extend beyond said termination date shall survive the expiration or termination hereof.

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 or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) to the Project Manager(all departments except Aviation):
 Miami-Dade County
 General Services Administration
 200 N.W. 1st Street, 1st Floor
 Miami, FL 33128
 Attention: Mr. Jude Plummer, Pest Control Manager
 Phone: (305) 375-3730
 Fax: (305) 375-3914

and, for the Aviation Department :

Miami-Dade Aviation Department
 Terminal Building Maintenance Section
 P.O. Box 025504
 Miami, FL 33102-5504
 Attention: Mr. Michael Garcia and Mr. Ivan Valdes, Co-Pest control Managers
 Phone: (305) 876-7756

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b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

Terminix International
1481 NW 65th Avenue
Plantation, FL 33313
Attention: Mr. John Christy
Phone: (954) 486-7655
Fax: (954) 486-9795
E-mail: Jchristy@Terminix.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be as stated in the Work Order(s) issued as a result of this Agreement. All Services undertaken by the Contractor before County's approval of this Contract and any subsequent Work Order shall be at the Contractor's risk and expense.

ARTICLE 8. Pricing

Prices for each Work Order shall remain firm and fixed for the term of the Contract, including any option or extension periods, unless otherwise specified in the applicable Work Order issued as a result of this Contract; however, the Contractor may offer incentive discounts which the County may accept. Notwithstanding, the Contractor may request a justified price adjustment (not to exceed 3% of the then current price) ninety days prior to any renewal of the then current Contract term (if the Work Order term runs concurrently with the Contract term) or the Work Order term (if such term does not run concurrently with the Contract term). The County may accept or reject the price adjustment or negotiate a lower price adjustment. The County's rejection of a price adjustment shall not affect the County's right to renew or extend the Contract or Work Order at the then current price.

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 monthly unless another time of payment is established in the applicable Work Order. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that

interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as indicated in the applicable Work Order. The County may at any time designate a different address and/or contact person by giving written notice to the other party. The County may also specify a different mailing address and/or contact person in any individual Work Order.

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 Provider or its employees, agents, servants, partners principals or subcontractors. Provider 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.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 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 Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, 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 \$500,000 combined single limit per occurrence for bodily injury and property damage.

Under no circumstances is the Contractor permitted on the A.O.A. side of the airport without increasing automobile coverage to \$5,000,000. The Contractor will need to obtain this insurance only if awarded a Work Order at the Airport that requires it.

The County reserves the right to request additional insurance requirements at the time the County issues a Work Order Proposal Request.

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.

Notwithstanding the above company rating qualifications, the County reserves the right to accept policies for the Professional Liability Insurance from companies that have alternative qualifications that the County deems acceptable.

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.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

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. However, such substitution can be implemented immediately with the County's approval.

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 Contractor 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, including any subsequent Work Order, 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 or any subsequent Work Order 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 debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

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 or any subsequent Work Order 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 the applicable Work Order 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 or any subsequent Work Order 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 applicable Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of the

applicable Work Order, and that have been specifically developed for the sole purpose of the applicable 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 or any subsequent Work Order 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 and/or the applicable Work Order 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:

- a) lost revenues;
- b) 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,
- c) such other direct damages.

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

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor 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 acknowledge 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 The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline 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 County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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 Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County 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 Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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:

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

- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) 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, sexual preference, 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.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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, handicap, marital status, age or national origin, and will take affirmative action to ensure 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, 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 Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

ARTICLE 37. BANKRUPTCY

The County 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.

ARTICLE 38. GOVERNING LAW

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

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

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. 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.

MIAMI-DADE COUNTY, FLORIDA

CONTRACT NO. RFQ8264C

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

Contractor

Miami-Dade County

By: TERMINIX INTL

By: _____

Name: LEWIS S. KAPLAN

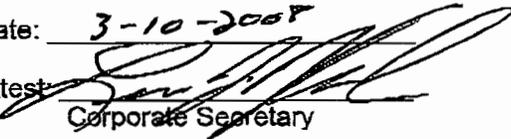
Name: _____

Title: Branch Manager

Title: _____

Date: 3-10-2008

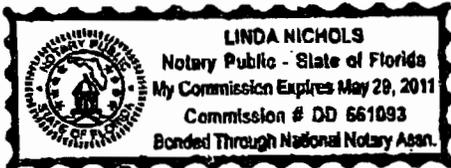
Date: _____

Attest: 
Corporate Secretary

Attest: _____
Clerk of the Board

Corporate Seal

Approved as to form
and legal sufficiency




Assistant County Attorney



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Appendix A

1. INTRODUCTION

The Integrated Pest Management (IPM) Program for Miami-Dade County is intended to eliminate indoor populations of domestic rats, mice, cockroaches, ants, silverfish, fleas, spiders and any other arthropod pest not specifically excluded. Pests specifically excluded are birds, snakes, lizards, vertebrates other than commensal rodents, termites, other wood-destroying organisms, mosquitoes and insects that primarily feed on outdoor vegetation and are found within the outside property boundaries of the buildings. The minimal services required for the IPM Program, in general, are detailed in Sections 5 through 8. However, each individual Work Order (see Section 4) will identify the services required therein.

The Contractor should understand the concepts and principles of IPM and have experience with the implementation of IPM programs in industrial, commercial and/or institutional facilities. The Contractor shall provide a plan(s) that will keep facilities insect/pest-free. The County will not permit subcontracting in providing the pest control and management tasks described herein.

The Contractor shall at all times cooperate with the County and coordinate with the County's Project Manager and the Facility Administrator their respective work efforts to most effectively and efficiently perform the Services. Contractor shall comply with applicable laws, ordinances and regulations related to the pest control business; including but not limited to Florida Statutes, Chapter 482, Pest Control in the performance of these services. Regular pest management service shall consist of working with the County's Project Manager and departmental staff to establish an IPM Program with application of least toxic pest control products. Application of pesticides shall be in accordance with Florida Statute 482 and Chapter 5E-14, Entomology-Pest Control Regulations. Pesticides shall be applied only when necessary to destroy a specific target pest which is currently infesting a facility. Should there be any conflict between the Scope of Services and applicable laws, the more stringent requirements shall prevail.

2. MINIMUM QUALIFICATION REQUIREMENT

The minimum qualification requirement is that the Contractor must have a current license issued by the Florida Department of Agriculture and Consumer Services to operate a pest control business for a business location that the Contractor would use to provide services to the County under the Contract.

"Business location" for the purposes of this section shall mean an advertised permanent location in or from which pest control business is solicited, accepted, or conducted (Fla. Statutes, Chapter 482; Pest Control). Note: The County will allow the Contractor to operate from multiple locations as long as each location meets these requirements. Additionally, each Contractor's Service Technician that will provide service to the County shall have an identification card per the Florida Statutes, Chapter 482.071 Licenses.

3. STRUCTURE OF THE POOL

It is the County's intention to establish an IPM Pool with up to up to five Contractors. The Agreement will be supplemented, upon project award, by individual Work Orders specifying project scopes and price and payment information.

Membership in the Pool is a prerequisite for obtaining opportunities to present proposals/bids for projects selected for this Pool. However, there is no guarantee that any or all Pool members will obtain Work Orders issued through this Pool. Selection into a Pool does not guarantee work, and does not provide for exclusive rights by any firm to provide services to the County.

At the County's discretion, members may be dropped from the Pool for lack of participation, which shall include failure over a reasonable time to propose on projects offered through the Pool, poor performance on a WOPR, being in arrears in obligations to the County, and any other reason specified by County policies and

procedures. Contractors must maintain the qualifications of the firm and proposed personnel at a standard consistent and equivalent to the qualification submissions submitted hereto.

4. WORK ORDER PROCESS

When the need arises, the County will prepare a scope of work and provide the Pool members with information regarding the selection process and response requirements. Work Order awards will be made competitively, generally based on quality and/or price. The County may negotiate each Work Order award or may award a Work Order on the basis of initial offers received. The County reserves the right to enter into negotiations with the recommended Pool member. If the County and the recommended Pool member cannot negotiate a successful Work Order, the County may terminate negotiations and begin negotiations with another recommended pool member. Alternatively, the County may at any time perform the services or engage a contractor outside of the pool for these services. The County reserves the right to establish an alternate, streamlined method for awarding Work Orders.

5. GENERAL SERVICES

Any rodent populations found outside of the specified buildings, but within the property line shall be eliminated. Populations of ants within 10 feet of the specified buildings shall also be eliminated. Perimeter spraying will be allowed only in special circumstances when approved by the County's Project Manager. Outside areas of coverage for specified buildings within the County's parks shall be limited to an area within 50 feet of the building for rodent control and within 10 feet of the building for other pests. Areas outside this boundary shall be excluded. Should the need arise for remediation of a fire ant problem, only Contractors licensed under Florida Statute 482 in the category of Lawn and Ornamental Pest Control will be considered to perform these services.

Contractor shall locate and advise the County's Project Manager of indoor fly and mosquito problems. Infestations of drain flies shall be treated by use of a County approved foaming agent or by steam cleaning after an initial cleaning by the facility personnel.

Stinging and biting arthropods such as scorpions and bird mites in the interior of buildings, and colonies of stinging hymenopterous insects such as mud daubers, paper wasps, hornets and honey bees (including "Africanized" honey bees) on interior or exterior building surfaces, within the structural component of the building or in exterior recesses which are only accessible from the outside of the building shall be treated and eliminated. When combs are located on the outside of walls, the Contractor shall remove the dead bees, honey and combs after bee eradication. When such nests are out of reach and a lift is required to provide this service the Contractor shall advise the County and upon approval by the County's Project Manager the Contractor may rent a lift if needed. The rental cost for the lift shall be passed on to the County for reimbursement.

6. REQUIREMENTS AND SERVICES TO BE PROVIDED

Contractor shall provide, at a minimum, the services, as applicable, described herein.

A. PEST MANAGEMENT PLAN AND SERVICE SCHEDULE

After issuance of a Work Order, the Contractor shall conduct a thorough, initial inspection of each building or facility and develop a proposed Pest Management Plan and Service Schedule ("Plan") for each building or facility. Upon approval by the County's Project Manager, the Contractor may submit a single Plan for a group of similar co-located buildings if applicable, or a single Plan for similar buildings within a department if applicable which are located throughout the County. The County's Project Manager shall determine the acceptability of the Plan. Upon approval of each Plan, the Contractor shall deliver one (1) copy of each approved Plan to the County's Project Manager and one (1) copy to the County's designated facility

administrator for each respective facility. Any proposed subsequent change(s) to the Plan shall be brought to the attention of the respective facility's building administrator and the County's Project Manager, and approved by the County's Project Manager prior to the implementation of the change(s).

1. The Plan shall contain each of the five (5) items listed below. The Plan shall develop and explain the method of pest management in each and every facility or building. The Plan shall:
 - a. Indicate by common name every pest that will be target of or subject to continuous pest monitoring procedures. Indicate monitoring devices that will be employed, such as insect traps, whether they will be baited or unbaited and their replacement cycle. Estimate what proportion of actual service will be spent in inspection or survey.
 - b. Provide a list of equipment, supplies, and pesticides used for pest management, including brand names of rodent bait boxes, insect and rodent trapping devices, pest monitoring devices and any other control devices or equipment to be used in each facility or building.
 - c. List areas, if any, in the facility where the Contractor will use preventive application of liquid, residual pesticides; methods of application to be used; and the brand names of the pesticides.
 - d. Describe structural, sanitary or operational conditions in each facility that promotes pest infestations.
 - e. Describe unusual or special pest management requirements or pest infestations that may be difficult to control or require extraordinary equipment such as ladders, lifting devices, lighting equipment, etc., at each facility.
2. Prior to approval of the Plan by the County's Project Manager, Contractor shall provide for pest management services in all County facilities and buildings awarded. After approval of the Plan by the County's Project Manager, Contractor shall accomplish all work using practices, procedures and operations as established and described in the Plan.

B. PESTICIDES

1. Contractor shall safely use pesticides.
 - a. The Contractor shall not apply any pesticide product or use any application procedure which has not been included in the Plan or specifically approved by the County's Project Manager.
 - b. As a general rule, application of pesticides in any inside or outside area of a building or facility shall not occur unless visual inspection or monitoring indicates the presence of pests in that specific area. Actual specimens of insect pests must be seen and identified before pesticides are applied. Fresh rodent droppings, burrows, rub marks or runways are sufficient to indicate the presence of rodents in an area. Complaints by facility occupants, tenants or affected persons shall be verified by survey or inspection by Contractor's technician prior to pesticide application.
 - c. Preventive pesticide treatments of inside and outside areas where inspections indicate a high potential for insect or rodent infestation are acceptable on a case-by-case basis after approval by the County's Project Manager. Contractor shall indicate in the Plan for a facility specific areas in that facility, potential pest(s) to be managed, pesticides to be used, and methods of application if preventive treatments are justified, all of which are subject to review and approval by the County's Project Manager.

- d. Coordination of pesticide application shall be established with the Facility Administrator of the respective facility. Records of all applications shall be maintained in accordance with the requirements of the contract as a result from this Solicitation.
 - e. All pesticides used in County sites, facilities, vehicles, etc. including busses, rail and mover cars shall be tracked by brand name and use location.
2. All pesticides used by the Contractor shall be registered with the United States Environmental Protection Agency (USEPA) or have appropriate special local need registration. Transport, handling and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable federal, state, and local laws and regulations. Public safety and environmental quality shall be protected at all times. Contractor shall apply only pesticides that have been approved by the County's Project Manager. No pesticide products, containers or dispersal equipment that is the property of the Contractor shall be stored in or on County property.
- a. Service Technicians: If the Contractor's Service Technician applies pesticide in a manner inconsistent with label directions, the Contractor shall notify the County's Project Manager and pursue corrective action acceptable to the County's Project Manager.
 - b. Samples: The County shall receive from the Contractor such samples of chemicals and materials for laboratory analysis as the County may deem necessary. The County reserves the right to inspect storage facilities and examine records and files belonging to Contractors related to its performance of services requested herein during normal business hours by giving reasonable advance notice.
 - c. Ineffective pesticides: When a particular pesticide chemical in use at County facilities has lost its effectiveness (e.g., due to increase in resistance in the target pest population), the Contractor shall replace such ineffective chemical with a more effective pesticide product. An ineffective pesticide is any product that is used repeatedly in an acceptable manner without significant reduction of pest population. The least toxic replacement product shall be selected. Such change of pesticide utilization shall be coordinated with and approved by the County's Project Manager.
3. Insect control: The Contractor shall use non-insecticidal methods of insect control whenever and wherever possible. For example, use portable vacuum cleaners rather than pesticide sprays or dusts; trapping devices rather than pesticide sprays or dusts; sticky traps to guide and evaluate cockroach or ant management procedures; and growth or reproduction regulating products. When it is determined that an insecticidal dust or liquid must be used in order to obtain adequate insect control, Contractor shall employ the least hazardous product, most precise application technique, and minimum quantity of pesticide necessary to achieve control. Contractor shall minimize the use of liquid pesticide applications whenever and wherever possible.
- a. Containerized and other types of bait formulations rather than sprays shall be used for cockroach and ant control to the greatest extent possible. The County considers bait formulations to be the standard pesticide product for typical office space.
 - b. As a general rule, liquid or dust insecticide formulations shall be applied only as crack and crevice treatments with application devices specifically designed or modified for this purpose.
 - c. Application of pesticide liquid, aerosol or dust to or on exposed surfaces and pesticides space sprays (including fogs, mists, and ultra-low volume applications), shall be restricted to unique situations where no alternative measures are practical. Contractor shall obtain the approval of the County's Project Manager prior to any application of pesticide liquid, aerosol, or space spray

treatment to exposed surfaces.

- d. Contractor shall take all necessary precautions to ensure tenant and employee safety, and to ensure the containment of the pesticide to the site of application. No liquid, aerosol, or dust applications of insecticide shall be made while tenant personnel are present.
4. Rodent control: As a general rule, rodent control inside occupied buildings shall be accomplished with trapping devices only. All such devices shall be concealed out of general view and in protected areas so as not to be affected by routine cleaning and other facility operations. For aesthetic and or safety reasons there are times when traps must be placed in trap boxes or otherwise protected. Trapping devices shall be checked daily or on a schedule approved by the County's Project Manager. Trapping shall not be performed during periods when trap maintenance will be delayed by holidays, weekends, etc. in buildings or facilities which are occupied by people during that period. Trapping may continue in buildings that are normally vacant during weekends and holidays. In these buildings traps shall be inspected and serviced by 8:00 a.m. on the first workday after the weekend or holiday. Contractor shall dispose of all trapped rodents and all rodent carcasses in a sanitary and safe manner. Additionally, Contractor shall remove trapped or dead rodents from inside or around County buildings or facilities within 24 hours of being notified by the Facility Administrator or the County's Project Manager. The intent of the rodent control requirements is to eliminate the rodents in the sites as quickly as possible. The Contractor's Service Technician shall inform the Facility Administrator and the County's Project Manager of factors contributing to the infestation both in writing and verbally.
- a. Rodenticide products shall not typically be used inside buildings. In exceptional circumstances, when rodenticides are deemed essential for adequate rodent control inside occupied buildings, the Contractor shall obtain approval of the County's Project Manager prior to making any interior rodenticide treatment.
 - b. All rodenticides, regardless of packaging shall be placed either in locations not accessible to children, pets, wildlife and domestic animals, or in USEPA-approved tamper resistant bait boxes. All rodenticides shall be collected and removed from County facilities after a rodent outbreak has been abated.
 - c. Frequency of bait box servicing shall depend upon the level of rodent infestation. All bait boxes shall be maintained in accordance with USEPA regulations, with an emphasis on the safety of non-target organisms. Contractor shall adhere to the following criteria:
 1. All bait boxes shall be placed out of general view and in locations where they will not be disturbed by routine building operations.
 2. The lids of all bait boxes shall be securely locked or fastened shut.
 3. All bait boxes shall be securely attached or anchored to the floor, ground, wall, or other surface, so that the box cannot be easily picked up or moved.
 4. Bait shall always be placed in the baffle-protected feeding chamber of the box and never in the runway of the box.
 5. All bait boxes shall be labeled with the Contractor's business name and address, and dated of the installation and each servicing. Permanently installed bait stations shall be approved by the County's Project Manager prior to installation. A listing with map locations shall be maintained by Contractor of all permanently installed bait stations. This listing shall be made available to the County's Project Manager upon request.

6. Permanently installed bait stations shall be removed within 30 days of the end of the applicable Work Order. All bait stations not removed with this timeframe may be used or discarded by the County at its discretion.
7. As a general rule, rodenticide application outside buildings shall emphasize the direct treatment of rodent burrows wherever feasible. Contractor shall bait and back-fill all burrows after initial treatment and shall keep a record of the location of these burrows for future reference. The use of tracking powder must be approved by the County's Project Manager.
8. The Contractor shall furnish an adequate supply of materials necessary, at the discretion of County's Project Manager or Facility Administrator, to inspect the interior of all rodent bait stations. These materials may include Allen wrenches to loosen and retighten fasteners on rodent bait boxes, keys to locks on traps, or replacement self-locking plastic ties. Implements to cut plastic ties are not included under this provision.
9. When one or more trapping devices or bait boxes are placed in a facility, the Contractor shall notify the Facility Administrator and the County's Project Manager of the use and location of such devices. When there is an active infestation inside a facility the Contractor shall check on traps daily.
10. The Contractor shall replace damaged or missing bait boxes.

C. RE-INFESTATION

Should re-infestation occur or infestation persist after Contractor has serviced a facility, the Contractor shall provide a re-treatment as requested by the County's Project Manager, Facility Administrator, or Building Manager at no additional cost to the County. Re-treatment service visits by the Contractor shall be performed within twenty-four (24) hours after notification by the Facility Administrator, Building Manager or the County's Project Manager, at no cost to the County.

D. EMERGENCY PEST MANAGEMENT SERVICES

Contractor shall respond promptly and effectively to requests for emergency pest control service as further described below. An emergency is defined for the herein purposes as the sighting of stinging or biting arthropods, or rodents.

1. Contractor shall respond to requests for Emergency Pest Management Services within four hours of the request. (The response time may be extended at the sole option of the County.) In no case shall the approved response time exceed 24 hours. Such response shall comply with all requirements contained herein and in the applicable Work Order. In the event that such services cannot be provided within four hours, the Contractor shall immediately notify the County's Project Manager and the Facility Administrator and indicate an anticipated response time. Emergency Pest Management Services shall be recorded in the Pest Control Work and Inspection Report in the facility pest management file. There shall be no additional cost to the County by the Contractor for any Emergency Pest Management Services provided during normal working hours.
2. In the event that the County's Project Manager or Facility Administrator request that emergency services are to be provided when the Contractor's personnel are normally not available such as night time and other off hours, the Contractor shall respond. The Contractor will be paid in accordance with the fees established in the individual Work Orders.

E. PEST CONTROL PERSONNEL

Contractor shall have a staff of trained and qualified supervisors and technicians to provide these services to the County who are familiar with current IPM practices and able to make effective application of IPM procedures when dealing with actual or potential pest infestations. The individual who the Contractor designates to be its Project Manager for the purposes of any Work Order shall be certified as a commercial pest applicator in the category of General Household Pest and Rodent Control in the State of Florida.

1. The Contractor's Service Technicians shall be certified as commercial pesticide applicators in the category of General Household Pest and Rodent Control or possess an employee identification card under the Contractor's employment and supervision of the Contractor's pest control operator in charge who is certified in the category of General Household Pest and Rodent Control in the State of Florida.
2. Contractor shall employ at least one licensed pest control operator for each of the Contractor's business locations that provides services herein and a sufficient number of Service Technicians to perform the services in a manner satisfactory to the County.
 - a. Pest control operator(s) in charge shall have a working knowledge of any Contract and the applicable Work Order under which services are being provided and the details of each facility serviced.
 - b. The Service Technician(s) shall have the authority to act on matters pertaining to the performance of services required herein. The Service Technician(s) shall assure safety and accomplish the coordination and continuity of the program routine.
 - c. The Service Technician(s) shall coordinate with the Facility Administrator of each facility at the beginning of each visit in order to review the Plan, and to receive information on pest infestations needing abatement action.
 - d. All personnel providing on-site pest management services at County facilities shall carry a copy of their current pest control operator's certificate or employee identification card which has been issued by the Florida Department of Agriculture and Consumer Services.

F. SERVICE TO FACILITIES

1. Services which do not adversely affect tenant health or productivity may be performed during the regular hours of operation of the facility. Pesticides with a high capacity to vaporize either active or inert components shall be applied at night or on weekends when the building is vacated to allow for ventilation before tenants re-enter the facility. When it is necessary to perform work on weekends or outside the regularly scheduled hours set in the Plan, the Contractor shall notify the Facility Administrator and the County's Project Manager at least two (2) working days in advance.
2. When service to unoccupied areas is required, the Contractor shall notify the Facility Administrator at least two (2) working days in advance of the treatment, provide and post all necessary signage, take whatever steps necessary to assure the security of the area treated, and remove signage when the area is safe for re-entry.
3. Contractor shall observe all safety precautions throughout the performance of services. Certain areas within some facilities may require special instructions for Service Technicians entering the facility. Any restrictions associated with these special areas will be explained by the Facility Administrator. These restrictions shall be adhered to and incorporated into the Plan for the facility. Facility area passes will

be supplied by the County on an "as needed" basis.

4. Contractor shall immediately inform the County's Project Manager of any sanitation or structural problems, or operational conditions not remedied within thirty (30) days after the Contractor has reported said problems and/or conditions to the appropriate Facility Administrator.
5. All of the Contractor's personnel performing these services at County facilities shall wear distinctive uniform clothing. The uniform shall have the Contractor's name easily identifiable and affixed in a permanent or semi-permanent manner. The Contractor shall provide personnel protective equipment required for the safe performance of work. Protective clothing, equipment and devices shall, at a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the pesticide products being used and safety equipment used shall comply with instructions provided on the pesticide label.
6. Vehicles used by Contractor to provide these services shall be identified in accordance with state and local regulations.
7. Service technicians assigned to the Port of Miami shall report to assigned personnel at the facilities maintenance office before service ensues and when service at the Port is finished.
8. Full service to facilities shall be monthly at a minimum, or more frequently if needed, to fulfill the requirements for these services.
9. At some facilities, the Service Technician may need to be escorted at all times. These facilities will be identified in the applicable Work Order.
10. Access to some facilities may be granted only to Service Technicians that have passed the necessary security and/or criminal background checks. These facilities will be identified in the applicable Work Order. The Contractor shall obtain these clearances at its expense prior to starting any work.
11. When pest problems arise at a facility that is under treatment, the Contractor shall visit the facility, survey the problem and prepare a report to the Facility Administrator and the County's Project Manager. The report shall describe the nature of the problem, recommend a treatment program and recommend any actions that the County may need to initiate such as additional sanitation procedures.

G. RECORD REPORTING REQUIREMENTS

Contractor shall provide and update the following standard letter size documents and records in a file at each facility site office:

1. The Plan for the facility.
2. The current label for each pesticide that will be used in the facility and the most recent Material Safety Data Sheet (MSDS) for that pesticide. Additional labels and MSDS may be required to meet departmental needs at the request of the County's Project Manager.
3. A log book shall be maintained at each facility. Reports shall be inserted in the log book or kept in a separate file at each facility. Each time the Service Technician visits the facility he/she shall sign into and sign out of the log book.
 - a. For each visit to the facility by the Contractor's Service Technician, the Pest Control Work and Inspection Report ("Inspection Report") shall contain the name of the Service Technician, date of

service, arrival and departure times of the Contractor's Service Technician performing the service; location of infestations; pest(s) found; type of pest management procedure(s) and pest control materials utilized; signature of the Facility Administrator or designee; and a number assigned by the County's Project Manager. To effectively record the arrival and departure time of the Service Technician, the County prefers that the Contractor use an electronic system such as a bar-code.

- b. The Inspection Report shall be at a minimum a three (3) part form. In addition to maintaining a copy at each facility, the Contractor shall keep two (2) copies. The Contractor shall send one (1) copy to the County's Project Manager when so requested within three (3) business days. All forms will be printed and pre-numbered in sequential order.
- c. A separate Inspection Report shall be completed by the Service Technician who responds to complaints or calls for emergency service from the Facility Administrator and/or the County's Project Manager. The Inspection Report shall indicate that the visit is an unscheduled visit to the facility in response to a request for emergency service. Such visits shall be recorded.

H. TRAINING

1. Contractor shall provide periodic training on pest control topics no less frequently than once per quarter, to its personnel providing these pest control services. The training covered under this paragraph shall be in addition to training required by Florida Statute, Chapter 482, Pest Control. The training shall be given by a provider approved in advance by the County's Project Manager. Training on integrated pest management topics is highly desirable.
2. Contractor shall provide to the County's Project Manager a monthly report of the training provided to its personnel that are providing service to County facilities. The report shall include, at a minimum, the date, location, provider, subject of the training, and names and signatures of the personnel providing these services to the County who attended the training.

I. SAFETY

Contractor shall conform to all applicable Federal, State and County regulations, including the Occupational Safety and Health Administration (OSHA), the National Fire Protection Association (NFPA), the American National Standards Institute (ANSI), and other recognized safety standards, codes and practices, while performing the services required herein. Any fines levied by the above mentioned authorities because of inadequacies to comply with these requirements shall be borne by the Contractor. Contractor shall conform to all applicable Confined Space Requirements, 29 CFR 1910.146 including training, monitoring and providing personal protective equipment for those Service Technicians assigned to provide these services to the County.

7. ADDITION/DELETION OF FACILITIES

The County, at its sole discretion, may add or delete facilities to any Work Order. The County may obtain a proposal from and/or negotiate with the Contractor providing services on the applicable Work Order for related facilities, prior to adding a facility. The County may also opt to allow Pool members to compete for the additional facility. Notwithstanding these options, the County reserves the right to obtain the services for additional facilities by another means, including contracting with other contractors not in the Pool.

8. OPTIONAL SERVICES

The County, at its option, may require other related pest control services. If the applicable site where optional services are required is under a pest management program, the County may obtain a proposal from and/or negotiate with the Contractor providing services at the applicable site, prior to adding the optional services. The County at its sole discretion may opt to allow the other Pool members to compete for the optional services. Notwithstanding these options, the County may choose to obtain the optional services by another means, including contracting with other contractors not in the Pool.

INTEGRATED PEST MANAGEMENT POOL

Contract No. RFQ 8264D

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Hulett Environmental Services, a corporation organized and existing under the laws of the State of Florida, having an office at 6601 NW 14th Street, Plantation, FL 33313(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 participate in the County's Integrated Pest Management Pool ("Pool") of pre-qualified firms as a Pool "member", including competing for future requests to provide pest control and related services for Miami-Dade County when projects arise, on a non-exclusive and as needed basis, that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Qualifications (RFQ) No. 8264 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 February 4, 2008, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County may desire to procure from the Contractor Pest Control 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), RFQ No. 8264 and all associated addenda and attachments, the Contractor's Proposal, any subsequent Work Order issued hereto, 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.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the contract.
- d) The word "Contractor" to mean Hulett Environmental Services 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 "Change Order" or "Extra Work" or "Additional Work" resulting in 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 project.
- 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.
- n) The words "Work Order Proposal Request" (WOPR) to mean a solicitation document requesting proposals from Pool members.
- o) The words "Work Order Proposal" to mean a documentation presented by Pool members in response to a Work Order Proposal Request.

- p) The words "Work Order" to mean an assignment of work issued by the County to a Pool member to perform work specified therein.

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) any Work Order issued as a result of this Agreement, 4) Miami-Dade County's RFQ No. 8264 and any associated addenda and attachments thereof, and 5) 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 identified in any Work Order issued to the Contractor, 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 on the first page of this Agreement and shall be for duration of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners. The County reserves the right to exercise any option to renew with none, all or any number of Pool members at the County's sole discretion.

Work Order Term

Work Orders shall expire as stated on each individual Work Order issued under this Contract, and may extend past the expiration of this Contract. The provisions of any specific Work Order which commences prior to the termination date of this Contract and which will extend beyond said termination date shall survive the expiration or termination hereof.

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 or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) to the Project Manager(all departments except Aviation):
 Miami-Dade County
 General Services Administration
 200 N.W. 1st Street, 1st Floor
 Miami, FL 33128
 Attention: Mr. Jude Plummer, Pest Control Manager
 Phone: (305) 375-3730
 Fax: (305) 375-3914

and, for the Aviation Department :

Miami-Dade Aviation Department
 Terminal Building Maintenance Section
 P.O. Box 025504
 Miami, FL 33102-5504
 Attention: Mr. Michael Garcia and Mr. Ivan Valdes, Co-Pest control Managers
 Phone: (305) 876-7756

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b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

Hulett Environmental Services
6601 NW 14th Street
Plantation, FL 33313
Attention: Mr. Ron Box
Phone: (800) 285-7378
Fax: (800) 688-3284
E-mail: ron@bugs.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be as stated in the Work Order(s) issued as a result of this Agreement. All Services undertaken by the Contractor before County's approval of this Contract and any subsequent Work Order shall be at the Contractor's risk and expense.

ARTICLE 8. Pricing

Prices for each Work Order shall remain firm and fixed for the term of the Contract, including any option or extension periods, unless otherwise specified in the applicable Work Order issued as a result of this Contract; however, the Contractor may offer incentive discounts which the County may accept. Notwithstanding, the Contractor may request a justified price adjustment (not to exceed 3% of the then current price) ninety days prior to any renewal of the then current Contract term (if the Work Order term runs concurrently with the Contract term) or the Work Order term (if such term does not run concurrently with the Contract term). The County may accept or reject the price adjustment or negotiate a lower price adjustment. The County's rejection of a price adjustment shall not affect the County's right to renew or extend the Contract or Work Order at the then current price.

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 monthly unless another time of payment is established in the applicable Work Order. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that

interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as indicated in the applicable Work Order. The County may at any time designate a different address and/or contact person by giving written notice to the other party. The County may also specify a different mailing address and/or contact person in any individual Work Order.

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 Provider or its employees, agents, servants, partners principals or subcontractors. Provider 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.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 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 Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, 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 \$500,000 combined single limit per occurrence for bodily injury and property damage.

Under no circumstances is the Contractor permitted on the A.O.A. side of the airport without increasing automobile coverage to \$5,000,000. The Contractor will need to obtain this insurance only if awarded a Work Order at the Airport that requires it.

The County reserves the right to request additional insurance requirements at the time the County issues a Work Order Proposal Request.

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.

Notwithstanding the above company rating qualifications, the County reserves the right to accept policies for the Professional Liability Insurance from companies that have alternative qualifications that the County deems acceptable.

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.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

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

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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. However, such substitution can be implemented immediately with the County's approval.

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 Contractor 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, including any subsequent Work Order, 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 or any subsequent Work Order 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 debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

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 or any subsequent Work Order 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 the applicable Work Order 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 or any subsequent Work Order 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 applicable Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of the

applicable Work Order, and that have been specifically developed for the sole purpose of the applicable 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 or any subsequent Work Order 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 and/or the applicable Work Order 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:

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

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

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor 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 acknowledge 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 The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline 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 County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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 Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County 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 Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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:

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

- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) 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, sexual preference, 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.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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, handicap, marital status, age or national origin, and will take affirmative action to ensure 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, 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 Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

ARTICLE 37. BANKRUPTCY

The County 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.

ARTICLE 38. GOVERNING LAW

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

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

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. 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.

MIAMI-DADE COUNTY, FLORIDA

CONTRACT NO. RFQ8264D

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

Contractor

Miami-Dade County

By: [Signature]

By: _____

Name: Mike Fearn

Name: _____

Title: Vice-President

Title: _____

Date: 3/10/08

Date: _____

Attest: [Signature]
Corporate Secretary

Attest: _____
Clerk of the Board

Corporate Seal

Approved as to form and legal sufficiency

OFFICIAL NOTARY SEAL
Brenda Burch
Commission # DD455757
My Commission Expires
JULY 28, 2009

[Signature]
Assistant County Attorney



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Appendix A

1. INTRODUCTION

The Integrated Pest Management (IPM) Program for Miami-Dade County is intended to eliminate indoor populations of domestic rats, mice, cockroaches, ants, silverfish, fleas, spiders and any other arthropod pest not specifically excluded. Pests specifically excluded are birds, snakes, lizards, vertebrates other than commensal rodents, termites, other wood-destroying organisms, mosquitoes and insects that primarily feed on outdoor vegetation and are found within the outside property boundaries of the buildings. The minimal services required for the IPM Program, in general, are detailed in Sections 5 through 8. However, each individual Work Order (see Section 4) will identify the services required therein.

The Contractor should understand the concepts and principles of IPM and have experience with the implementation of IPM programs in industrial, commercial and/or institutional facilities. The Contractor shall provide a plan(s) that will keep facilities insect/pest-free. The County will not permit subcontracting in providing the pest control and management tasks described herein.

The Contractor shall at all times cooperate with the County and coordinate with the County's Project Manager and the Facility Administrator their respective work efforts to most effectively and efficiently perform the Services. Contractor shall comply with applicable laws, ordinances and regulations related to the pest control business; including but not limited to Florida Statutes, Chapter 482, Pest Control in the performance of these services. Regular pest management service shall consist of working with the County's Project Manager and departmental staff to establish an IPM Program with application of least toxic pest control products. Application of pesticides shall be in accordance with Florida Statute 482 and Chapter 5E-14, Entomology-Pest Control Regulations. Pesticides shall be applied only when necessary to destroy a specific target pest which is currently infesting a facility. Should there be any conflict between the Scope of Services and applicable laws, the more stringent requirements shall prevail.

2. MINIMUM QUALIFICATION REQUIREMENT

The minimum qualification requirement is that the Contractor must have a current license issued by the Florida Department of Agriculture and Consumer Services to operate a pest control business for a business location that the Contractor would use to provide services to the County under the Contract.

"Business location" for the purposes of this section shall mean an advertised permanent location in or from which pest control business is solicited, accepted, or conducted (Fla. Statutes, Chapter 482; Pest Control). Note: The County will allow the Contractor to operate from multiple locations as long as each location meets these requirements. Additionally, each Contractor's Service Technician that will provide service to the County shall have an identification card per the Florida Statutes, Chapter 482.071 Licenses.

3. STRUCTURE OF THE POOL

It is the County's intention to establish an IPM Pool with up to up to five Contractors. The Agreement will be supplemented, upon project award, by individual Work Orders specifying project scopes and price and payment information.

Membership in the Pool is a prerequisite for obtaining opportunities to present proposals/bids for projects selected for this Pool. However, there is no guarantee that any or all Pool members will obtain Work Orders issued through this Pool. Selection into a Pool does not guarantee work, and does not provide for exclusive rights by any firm to provide services to the County.

At the County's discretion, members may be dropped from the Pool for lack of participation, which shall include failure over a reasonable time to propose on projects offered through the Pool, poor performance on a WOPR, being in arrears in obligations to the County, and any other reason specified by County policies and

procedures. Contractors must maintain the qualifications of the firm and proposed personnel at a standard consistent and equivalent to the qualification submissions submitted hereto.

4. WORK ORDER PROCESS

When the need arises, the County will prepare a scope of work and provide the Pool members with information regarding the selection process and response requirements. Work Order awards will be made competitively, generally based on quality and/or price. The County may negotiate each Work Order award or may award a Work Order on the basis of initial offers received. The County reserves the right to enter into negotiations with the recommended Pool member. If the County and the recommended Pool member cannot negotiate a successful Work Order, the County may terminate negotiations and begin negotiations with another recommended pool member. Alternatively, the County may at any time perform the services or engage a contractor outside of the pool for these services. The County reserves the right to establish an alternate, streamlined method for awarding Work Orders.

5. GENERAL SERVICES

Any rodent populations found outside of the specified buildings, but within the property line shall be eliminated. Populations of ants within 10 feet of the specified buildings shall also be eliminated. Perimeter spraying will be allowed only in special circumstances when approved by the County's Project Manager. Outside areas of coverage for specified buildings within the County's parks shall be limited to an area within 50 feet of the building for rodent control and within 10 feet of the building for other pests. Areas outside this boundary shall be excluded. Should the need arise for remediation of a fire ant problem, only Contractors licensed under Florida Statute 482 in the category of Lawn and Ornamental Pest Control will be considered to perform these services.

Contractor shall locate and advise the County's Project Manager of indoor fly and mosquito problems. Infestations of drain flies shall be treated by use of a County approved foaming agent or by steam cleaning after an initial cleaning by the facility personnel.

Stinging and biting arthropods such as scorpions and bird mites in the interior of buildings, and colonies of stinging hymenopterous insects such as mud daubers, paper wasps, hornets and honey bees (including "Africanized" honey bees) on interior or exterior building surfaces, within the structural component of the building or in exterior recesses which are only accessible from the outside of the building shall be treated and eliminated. When combs are located on the outside of walls, the Contractor shall remove the dead bees, honey and combs after bee eradication. When such nests are out of reach and a lift is required to provide this service the Contractor shall advise the County and upon approval by the County's Project Manager the Contractor may rent a lift if needed. The rental cost for the lift shall be passed on to the County for reimbursement.

6. REQUIREMENTS AND SERVICES TO BE PROVIDED

Contractor shall provide, at a minimum, the services, as applicable, described herein.

A. PEST MANAGEMENT PLAN AND SERVICE SCHEDULE

After issuance of a Work Order, the Contractor shall conduct a thorough, initial inspection of each building or facility and develop a proposed Pest Management Plan and Service Schedule ("Plan") for each building or facility. Upon approval by the County's Project Manager, the Contractor may submit a single Plan for a group of similar co-located buildings if applicable, or a single Plan for similar buildings within a department if applicable which are located throughout the County. The County's Project Manager shall determine the acceptability of the Plan. Upon approval of each Plan, the Contractor shall deliver one (1) copy of each approved Plan to the County's Project Manager and one (1) copy to the County's designated facility

administrator for each respective facility. Any proposed subsequent change(s) to the Plan shall be brought to the attention of the respective facility's building administrator and the County's Project Manager, and approved by the County's Project Manager prior to the implementation of the change(s).

1. The Plan shall contain each of the five (5) items listed below. The Plan shall develop and explain the method of pest management in each and every facility or building. The Plan shall:
 - a. Indicate by common name every pest that will be target of or subject to continuous pest monitoring procedures. Indicate monitoring devices that will be employed, such as insect traps, whether they will be baited or unbaited and their replacement cycle. Estimate what proportion of actual service will be spent in inspection or survey.
 - b. Provide a list of equipment, supplies, and pesticides used for pest management, including brand names of rodent bait boxes, insect and rodent trapping devices, pest monitoring devices and any other control devices or equipment to be used in each facility or building.
 - c. List areas, if any, in the facility where the Contractor will use preventive application of liquid, residual pesticides; methods of application to be used; and the brand names of the pesticides.
 - d. Describe structural, sanitary or operational conditions in each facility that promotes pest infestations.
 - e. Describe unusual or special pest management requirements or pest infestations that may be difficult to control or require extraordinary equipment such as ladders, lifting devices, lighting equipment, etc., at each facility.
2. Prior to approval of the Plan by the County's Project Manager, Contractor shall provide for pest management services in all County facilities and buildings awarded. After approval of the Plan by the County's Project Manager, Contractor shall accomplish all work using practices, procedures and operations as established and described in the Plan.

B. PESTICIDES

1. Contractor shall safely use pesticides.
 - a. The Contractor shall not apply any pesticide product or use any application procedure which has not been included in the Plan or specifically approved by the County's Project Manager.
 - b. As a general rule, application of pesticides in any inside or outside area of a building or facility shall not occur unless visual inspection or monitoring indicates the presence of pests in that specific area. Actual specimens of insect pests must be seen and identified before pesticides are applied. Fresh rodent droppings, burrows, rub marks or runways are sufficient to indicate the presence of rodents in an area. Complaints by facility occupants, tenants or affected persons shall be verified by survey or inspection by Contractor's technician prior to pesticide application.
 - c. Preventive pesticide treatments of inside and outside areas where inspections indicate a high potential for insect or rodent infestation are acceptable on a case-by-case basis after approval by the County's Project Manager. Contractor shall indicate in the Plan for a facility specific areas in that facility, potential pest(s) to be managed, pesticides to be used, and methods of application if preventive treatments are justified, all of which are subject to review and approval by the County's Project Manager.

- d. Coordination of pesticide application shall be established with the Facility Administrator of the respective facility. Records of all applications shall be maintained in accordance with the requirements of the contract as a result from this Solicitation.
 - e. All pesticides used in County sites, facilities, vehicles, etc. including busses, rail and mover cars shall be tracked by brand name and use location.
2. All pesticides used by the Contractor shall be registered with the United States Environmental Protection Agency (USEPA) or have appropriate special local need registration. Transport, handling and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable federal, state, and local laws and regulations. Public safety and environmental quality shall be protected at all times. Contractor shall apply only pesticides that have been approved by the County's Project Manager. No pesticide products, containers or dispersal equipment that is the property of the Contractor shall be stored in or on County property.
- a. Service Technicians: If the Contractor's Service Technician applies pesticide in a manner inconsistent with label directions, the Contractor shall notify the County's Project Manager and pursue corrective action acceptable to the County's Project Manager.
 - b. Samples: The County shall receive from the Contractor such samples of chemicals and materials for laboratory analysis as the County may deem necessary. The County reserves the right to inspect storage facilities and examine records and files belonging to Contractors related to its performance of services requested herein during normal business hours by giving reasonable advance notice.
 - c. Ineffective pesticides: When a particular pesticide chemical in use at County facilities has lost its effectiveness (e.g., due to increase in resistance in the target pest population), the Contractor shall replace such ineffective chemical with a more effective pesticide product. An ineffective pesticide is any product that is used repeatedly in an acceptable manner without significant reduction of pest population. The least toxic replacement product shall be selected. Such change of pesticide utilization shall be coordinated with and approved by the County's Project Manager.
3. Insect control: The Contractor shall use non-insecticidal methods of insect control whenever and wherever possible. For example, use portable vacuum cleaners rather than pesticide sprays or dusts; trapping devices rather than pesticide sprays or dusts; sticky traps to guide and evaluate cockroach or ant management procedures; and growth or reproduction regulating products. When it is determined that an insecticidal dust or liquid must be used in order to obtain adequate insect control, Contractor shall employ the least hazardous product, most precise application technique, and minimum quantity of pesticide necessary to achieve control. Contractor shall minimize the use of liquid pesticide applications whenever and wherever possible.
- a. Containerized and other types of bait formulations rather than sprays shall be used for cockroach and ant control to the greatest extent possible. The County considers bait formulations to be the standard pesticide product for typical office space.
 - b. As a general rule, liquid or dust insecticide formulations shall be applied only as crack and crevice treatments with application devices specifically designed or modified for this purpose.
 - c. Application of pesticide liquid, aerosol or dust to or on exposed surfaces and pesticides space sprays (including fogs, mists, and ultra-low volume applications), shall be restricted to unique situations where no alternative measures are practical. Contractor shall obtain the approval of the County's Project Manager prior to any application of pesticide liquid, aerosol, or space spray

treatment to exposed surfaces.

- d. Contractor shall take all necessary precautions to ensure tenant and employee safety, and to ensure the containment of the pesticide to the site of application. No liquid, aerosol, or dust applications of insecticide shall be made while tenant personnel are present.
4. Rodent control: As a general rule, rodent control inside occupied buildings shall be accomplished with trapping devices only. All such devices shall be concealed out of general view and in protected areas so as not to be affected by routine cleaning and other facility operations. For aesthetic and or safety reasons there are times when traps must be placed in trap boxes or otherwise protected. Trapping devices shall be checked daily or on a schedule approved by the County's Project Manager. Trapping shall not be performed during periods when trap maintenance will be delayed by holidays, weekends, etc. in buildings or facilities which are occupied by people during that period. Trapping may continue in buildings that are normally vacant during weekends and holidays. In these buildings traps shall be inspected and serviced by 8:00 a.m. on the first workday after the weekend or holiday. Contractor shall dispose of all trapped rodents and all rodent carcasses in a sanitary and safe manner. Additionally, Contractor shall remove trapped or dead rodents from inside or around County buildings or facilities within 24 hours of being notified by the Facility Administrator or the County's Project Manager. The intent of the rodent control requirements is to eliminate the rodents in the sites as quickly as possible. The Contractor's Service Technician shall inform the Facility Administrator and the County's Project Manager of factors contributing to the infestation both in writing and verbally.
- a. Rodenticide products shall not typically be used inside buildings. In exceptional circumstances, when rodenticides are deemed essential for adequate rodent control inside occupied buildings, the Contractor shall obtain approval of the County's Project Manager prior to making any interior rodenticide treatment.
 - b. All rodenticides, regardless of packaging shall be placed either in locations not accessible to children, pets, wildlife and domestic animals, or in USEPA-approved tamper resistant bait boxes. All rodenticides shall be collected and removed from County facilities after a rodent outbreak has been abated.
 - c. Frequency of bait box servicing shall depend upon the level of rodent infestation. All bait boxes shall be maintained in accordance with USEPA regulations, with an emphasis on the safety of non-target organisms. Contractor shall adhere to the following criteria:
 1. All bait boxes shall be placed out of general view and in locations where they will not be disturbed by routine building operations.
 2. The lids of all bait boxes shall be securely locked or fastened shut.
 3. All bait boxes shall be securely attached or anchored to the floor, ground, wall, or other surface, so that the box cannot be easily picked up or moved.
 4. Bait shall always be placed in the baffle-protected feeding chamber of the box and never in the runway of the box.
 5. All bait boxes shall be labeled with the Contractor's business name and address, and dated of the installation and each servicing. Permanently installed bait stations shall be approved by the County's Project Manager prior to installation. A listing with map locations shall be maintained by Contractor of all permanently installed bait stations. This listing shall be made available to the County's Project Manager upon request.

6. Permanently installed bait stations shall be removed within 30 days of the end of the applicable Work Order. All bait stations not removed with this timeframe may be used or discarded by the County at its discretion.
7. As a general rule, rodenticide application outside buildings shall emphasize the direct treatment of rodent burrows wherever feasible. Contractor shall bait and back-fill all burrows after initial treatment and shall keep a record of the location of these burrows for future reference. The use of tracking powder must be approved by the County's Project Manager.
8. The Contractor shall furnish an adequate supply of materials necessary, at the discretion of County's Project Manager or Facility Administrator, to inspect the interior of all rodent bait stations. These materials may include Allen wrenches to loosen and retighten fasteners on rodent bait boxes, keys to locks on traps, or replacement self-locking plastic ties. Implements to cut plastic ties are not included under this provision.
9. When one or more trapping devices or bait boxes are placed in a facility, the Contractor shall notify the Facility Administrator and the County's Project Manager of the use and location of such devices. When there is an active infestation inside a facility the Contractor shall check on traps daily.
10. The Contractor shall replace damaged or missing bait boxes.

C. RE-INFESTATION

Should re-infestation occur or infestation persist after Contractor has serviced a facility, the Contractor shall provide a re-treatment as requested by the County's Project Manager, Facility Administrator, or Building Manager at no additional cost to the County. Re-treatment service visits by the Contractor shall be performed within twenty-four (24) hours after notification by the Facility Administrator, Building Manager or the County's Project Manager, at no cost to the County.

D. EMERGENCY PEST MANAGEMENT SERVICES

Contractor shall respond promptly and effectively to requests for emergency pest control service as further described below. An emergency is defined for the herein purposes as the sighting of stinging or biting arthropods, or rodents.

1. Contractor shall respond to requests for Emergency Pest Management Services within four hours of the request. (The response time may be extended at the sole option of the County.) In no case shall the approved response time exceed 24 hours. Such response shall comply with all requirements contained herein and in the applicable Work Order. In the event that such services cannot be provided within four hours, the Contractor shall immediately notify the County's Project Manager and the Facility Administrator and indicate an anticipated response time. Emergency Pest Management Services shall be recorded in the Pest Control Work and Inspection Report in the facility pest management file. There shall be no additional cost to the County by the Contractor for any Emergency Pest Management Services provided during normal working hours.
2. In the event that the County's Project Manager or Facility Administrator request that emergency services are to be provided when the Contractor's personnel are normally not available such as night time and other off hours, the Contractor shall respond. The Contractor will be paid in accordance with the fees established in the individual Work Orders.

E. PEST CONTROL PERSONNEL

Contractor shall have a staff of trained and qualified supervisors and technicians to provide these services to the County who are familiar with current IPM practices and able to make effective application of IPM procedures when dealing with actual or potential pest infestations. The individual who the Contractor designates to be its Project Manager for the purposes of any Work Order shall be certified as a commercial pest applicator in the category of General Household Pest and Rodent Control in the State of Florida.

1. The Contractor's Service Technicians shall be certified as commercial pesticide applicators in the category of General Household Pest and Rodent Control or possess an employee identification card under the Contractor's employment and supervision of the Contractor's pest control operator in charge who is certified in the category of General Household Pest and Rodent Control in the State of Florida.
2. Contractor shall employ at least one licensed pest control operator for each of the Contractor's business locations that provides services herein and a sufficient number of Service Technicians to perform the services in a manner satisfactory to the County.
 - a. Pest control operator(s) in charge shall have a working knowledge of any Contract and the applicable Work Order under which services are being provided and the details of each facility serviced.
 - b. The Service Technician(s) shall have the authority to act on matters pertaining to the performance of services required herein. The Service Technician(s) shall assure safety and accomplish the coordination and continuity of the program routine.
 - c. The Service Technician(s) shall coordinate with the Facility Administrator of each facility at the beginning of each visit in order to review the Plan, and to receive information on pest infestations needing abatement action.
 - d. All personnel providing on-site pest management services at County facilities shall carry a copy of their current pest control operator's certificate or employee identification card which has been issued by the Florida Department of Agriculture and Consumer Services.

F. SERVICE TO FACILITIES

1. Services which do not adversely affect tenant health or productivity may be performed during the regular hours of operation of the facility. Pesticides with a high capacity to vaporize either active or inert components shall be applied at night or on weekends when the building is vacated to allow for ventilation before tenants re-enter the facility. When it is necessary to perform work on weekends or outside the regularly scheduled hours set in the Plan, the Contractor shall notify the Facility Administrator and the County's Project Manager at least two (2) working days in advance.
2. When service to unoccupied areas is required, the Contractor shall notify the Facility Administrator at least two (2) working days in advance of the treatment, provide and post all necessary signage, take whatever steps necessary to assure the security of the area treated, and remove signage when the area is safe for re-entry.
3. Contractor shall observe all safety precautions throughout the performance of services. Certain areas within some facilities may require special instructions for Service Technicians entering the facility. Any restrictions associated with these special areas will be explained by the Facility Administrator. These restrictions shall be adhered to and incorporated into the Plan for the facility. Facility area passes will

be supplied by the County on an "as needed" basis.

4. Contractor shall immediately inform the County's Project Manager of any sanitation or structural problems, or operational conditions not remedied within thirty (30) days after the Contractor has reported said problems and/or conditions to the appropriate Facility Administrator.
5. All of the Contractor's personnel performing these services at County facilities shall wear distinctive uniform clothing. The uniform shall have the Contractor's name easily identifiable and affixed in a permanent or semi-permanent manner. The Contractor shall provide personnel protective equipment required for the safe performance of work. Protective clothing, equipment and devices shall, at a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the pesticide products being used and safety equipment used shall comply with instructions provided on the pesticide label.
6. Vehicles used by Contractor to provide these services shall be identified in accordance with state and local regulations.
7. Service technicians assigned to the Port of Miami shall report to assigned personnel at the facilities maintenance office before service ensues and when service at the Port is finished.
8. Full service to facilities shall be monthly at a minimum, or more frequently if needed, to fulfill the requirements for these services.
9. At some facilities, the Service Technician may need to be escorted at all times. These facilities will be identified in the applicable Work Order.
10. Access to some facilities may be granted only to Service Technicians that have passed the necessary security and/or criminal background checks. These facilities will be identified in the applicable Work Order. The Contractor shall obtain these clearances at its expense prior to starting any work.
11. When pest problems arise at a facility that is under treatment, the Contractor shall visit the facility, survey the problem and prepare a report to the Facility Administrator and the County's Project Manager. The report shall describe the nature of the problem, recommend a treatment program and recommend any actions that the County may need to initiate such as additional sanitation procedures.

G. RECORD REPORTING REQUIREMENTS

Contractor shall provide and update the following standard letter size documents and records in a file at each facility site office:

1. The Plan for the facility.
2. The current label for each pesticide that will be used in the facility and the most recent Material Safety Data Sheet (MSDS) for that pesticide. Additional labels and MSDS may be required to meet departmental needs at the request of the County's Project Manager.
3. A log book shall be maintained at each facility. Reports shall be inserted in the log book or kept in a separate file at each facility. Each time the Service Technician visits the facility he/she shall sign into and sign out of the log book.
 - a. For each visit to the facility by the Contractor's Service Technician, the Pest Control Work and Inspection Report ("Inspection Report") shall contain the name of the Service Technician, date of

service, arrival and departure times of the Contractor's Service Technician performing the service; location of infestations; pest(s) found; type of pest management procedure(s) and pest control materials utilized; signature of the Facility Administrator or designee; and a number assigned by the County's Project Manager. To effectively record the arrival and departure time of the Service Technician, the County prefers that the Contractor use an electronic system such as a bar-code.

- b. The Inspection Report shall be at a minimum a three (3) part form. In addition to maintaining a copy at each facility, the Contractor shall keep two (2) copies. The Contractor shall send one (1) copy to the County's Project Manager when so requested within three (3) business days. All forms will be printed and pre-numbered in sequential order.
- c. A separate Inspection Report shall be completed by the Service Technician who responds to complaints or calls for emergency service from the Facility Administrator and/or the County's Project Manager. The Inspection Report shall indicate that the visit is an unscheduled visit to the facility in response to a request for emergency service. Such visits shall be recorded.

H. TRAINING

- 1. Contractor shall provide periodic training on pest control topics no less frequently than once per quarter, to its personnel providing these pest control services. The training covered under this paragraph shall be in addition to training required by Florida Statute, Chapter 482, Pest Control. The training shall be given by a provider approved in advance by the County's Project Manager. Training on integrated pest management topics is highly desirable.
- 2. Contractor shall provide to the County's Project Manager a monthly report of the training provided to its personnel that are providing service to County facilities. The report shall include, at a minimum, the date, location, provider, subject of the training, and names and signatures of the personnel providing these services to the County who attended the training.

I. SAFETY

Contractor shall conform to all applicable Federal, State and County regulations, including the Occupational Safety and Health Administration (OSHA), the National Fire Protection Association (NFPA), the American National Standards Institute (ANSI), and other recognized safety standards, codes and practices, while performing the services required herein. Any fines levied by the above mentioned authorities because of inadequacies to comply with these requirements shall be borne by the Contractor. Contractor shall conform to all applicable Confined Space Requirements, 29 CFR 1910.146 including training, monitoring and providing personal protective equipment for those Service Technicians assigned to provide these services to the County.

7. ADDITION/DELETION OF FACILITIES

The County, at its sole discretion, may add or delete facilities to any Work Order. The County may obtain a proposal from and/or negotiate with the Contractor providing services on the applicable Work Order for related facilities, prior to adding a facility. The County may also opt to allow Pool members to compete for the additional facility. Notwithstanding these options, the County reserves the right to obtain the services for additional facilities by another means, including contracting with other contractors not in the Pool.

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8. OPTIONAL SERVICES

The County, at its option, may require other related pest control services. If the applicable site where optional services are required is under a pest management program, the County may obtain a proposal from and/or negotiate with the Contractor providing services at the applicable site, prior to adding the optional services. The County at its sole discretion may opt to allow the other Pool members to compete for the optional services. Notwithstanding these options, the County may choose to obtain the optional services by another means, including contracting with other contractors not in the Pool.

Memorandum



Date: February 28, 2008

To: Rita Silva, CPPO
Senior Procurement Contracting Officer
Department of Procurement Management

From: Steven Corwin, CPPO, C.P.M.
Chairperson
Evaluation/Selection Committee 

Subject: Report of Evaluation/Selection Committee for RFQ No. 8264, Integrated Pest Management Pool

The Evaluation/Selection Committee has completed the task of evaluating statements of qualifications submitted in response to the above referenced Request for Qualifications ("RFQ") following the guidelines published in the solicitation as summarized below.

Committee meeting dates: February 11, 2008 kickoff meeting and February 27, 2008 meeting to score proposals and recommend pool members.

Verification of compliance with contract measures: The Review Committee meeting of April 11, 2007 recommended a Small Business Enterprise (SBE) selection factor for this solicitation. The Chairperson has determined that none of the firms that submitted proposals qualify for the selection factor.

Verification of compliance with minimum qualification requirements: The solicitation had minimum qualification requirements which were reviewed by the Chairperson and Mr. Jude Plummer of the client department, General Services Administration. All of the firms that submitted proposals met the requirements.

Summary of scores:

The Evaluation/Selection Committee decided not to hold oral presentations since the proposals submitted did not require further clarification. There were no prices submitted at the present time. The purpose of this solicitation was to establish a pool of qualified firms. When the need for services arise, prices will be obtained from the selected proposers.

The final scores are as follows:

Proposer	Technical Score (max.400)
1. Toro Pest Management	361
2. Hulett Environmental Services	361
3. Steritech Brand Protection Services	355
4. Terminix International	339
5. Budget Pest Control Service	291
6. Brando Services, Inc.	188

Local Preference: Local Preference was considered in accordance with applicable ordinances, but did not affect the outcome as all of the firms within 5% of the highest ranked firm were recommended for negotiations.

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Other information: At the Evaluation/Selection Committee meeting of February 28, 2008, one of the Committee members who was properly noticed of the meeting, did not attend. The Evaluation/Selection Committee decided to proceed with the evaluation with only the four members present.

Negotiations: The Evaluation/Selection Committee recommends that the County enter into negotiations with the four proposers with the highest scores, Toro Pest Management, Hulett Environmental Services, Steritech Brand Protection Services and Terminix International.

The following individuals will participate in the negotiations:

Steven Corwin, CPPO, C.P.M., Procurement Contracting Officer, DPM
Jude Plummer, Pest Control Manager, GSA

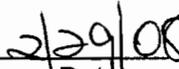
Justification for Recommendation: The Evaluation/Selection Committee has determined that the four firms selected all possess the understanding of integrated pest management approaches to pest control as evidenced by the work plans they submitted. They all possess adequate licensed and trained staff to carry out the tasks needed to control pests. This was substantiated by the training programs that they provided in their proposals.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Reviewed:



Sr. Procurement Contracting Officer



Date

RFQ NO. 8264
INTEGRATED PEST MANAGEMENT
EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (4 members)	Budget Pest Control Service	Terminix International	Steritech Brand Protection Services	Hulett Environmental Services	Brando Services, Inc.	Toro Pest Management
Proposer's approach and capability to provide the type of service described in this RFQ to include Proposer's Plan, training programs and emergency response capability		45	180	131	145	166	162	89	159
Proposer's experience, qualifications, and past performance in providing the type of services described in this RFQ		30	120	105	107	98	107	50	110
Experience and qualifications of key individuals that will be assigned to perform work for the County		25	100	55	87	91	92	49	92
Selection Factor (10% of the Total Technical Evaluation Points)		10%	40	0	0	0	0	0	0
Technical Points (Total of above technical rows)		100	400	291	339	355	361	188	361
TOTAL POINTS		100	440	291	339	355	361	188	361
Local Preference* (highest ranked proposer's total points - 5% = Local Preference range)									

DATE: 2/28/08
2/29/08
2/29/08

Signature: _____
Chairperson _____
Reviewed By: _____

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RFQ NO. 8264
**INTEGRATED PEST MANAGEMENT
 EVALUATION OF PROPOSALS**

CHALMERS VASQUEZ (PWD)

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Budget Pest Control Service	Terminix International	Steritech Brand Protection Services	Hulett Environmental Services	Brando Services, Inc.	Toro Pest Management
Proposer's approach and capability to provide the type of service described in this RFQ to include Proposer's Plan, training programs and emergency response capability		45	30	45	45	45	20	30
Proposer's experience, qualifications, and past performance in providing the type of services described in this RFQ		30	30	30	30	30	15	25
Experience and qualifications of key individuals that will be assigned to perform work for the County		25	10	25	25	25	10	20
Selection Factor (10% of the Total Technical Evaluation Points)		10%	0	0	0	0	0	0
Technical Points (Total of above technical rows)		100	70	100	100	100	45	75
TOTAL POINTS		100	70	100	100	100	45	75

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RFQ NO. 8264
**INTEGRATED PEST MANAGEMENT
 EVALUATION OF PROPOSALS**

CARLOS JOSE (MDAD)

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Budget Pest Control Service	Terminix International	Steritech Brand Protection Services	Hulett Environmental Services	Brando Services, Inc.	Toro Pest Management
	Proposer's approach and capability to provide the type of service described in this RFQ to include: Proposer's Plan, training programs and emergency response capability	45	35	36	41	39	34	44
	Proposer's experience, qualifications, and past performance in providing the type of services described in this RFQ	30	27	24	30	30	19	30
	Experience and qualifications of key individuals that will be assigned to perform work for the County	25	25	22	23	25	20	25
	Selection Factor (10% of the Total Technical Evaluation Points)	10%	0	0	0	0	0	0
	Technical Points (Total of above technical rows)	100	87	82	94	94	73	99
	TOTAL POINTS	100	87	82	94	94	73	99

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RFQ NO. 8264
**INTEGRATED PEST MANAGEMENT
 EVALUATION OF PROPOSALS**

DANIEL DOUGLASS (GSA)

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Budget Pest Control Service	Terminix International	Steritech Brand Protection Services	Hulett Environmental Services	Brando Services, Inc.	Torn Pest Management
Proposer's approach and capability to provide the type of service described in this RFQ to include Proposer's Plan, training programs and emergency response capability		45	36	25	39	44	18	41
Proposer's experience, qualifications, and past performance in providing the type of services described in this RFQ		30	24	26	15	28	5	26
Experience and qualifications of key individuals that will be assigned to perform work for the County		25	10	20	22	25	7	23
Selection Factor (10% of the Total Technical Evaluation Points)		10%	0	0	0	0	0	0
Technical Points (Total of above technical rows)		100	70	71	76	97	30	90
TOTAL POINTS		100	70	71	76	97	30	90

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RFQ NO. 8264
**INTEGRATED PEST MANAGEMENT
 EVALUATION OF PROPOSALS**

HAROLD GOLDSON (DBD)

SELECTION CRITERIA	Maximum Points Per Member	Budget Pest Control Service	Terminix International	Steritech Brand Protection Services	Hulett Environmental Services	Brando Services, Inc.	Toro Pest Management
Proposer's approach and capability to provide the type of service described in this RFQ to include Proposer's Plan, training programs and emergency response capability	45	30	39	41	34	17	44
Proposer's experience, qualifications, and past performance in providing the type of services described in this RFQ	30	24	27	23	19	11	29
Experience and qualifications of key individuals that will be assigned to perform work for the County	25	10	20	21	17	12	24
Selection Factor (10% of the Total Technical Evaluation Points)	10%	0	0	0	0	0	0
Technical Points (Total of above technical rows)	100	64	86	85	70	40	97
TOTAL POINTS	100	64	86	85	70	40	97

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