

Memorandum



Date: September 18, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Award: Comprehensive Disparity Study

Agenda Item No. 14(A)(4)

Recommendation

It is recommended that the Board of County Commissioners award contract RFP830, *Comprehensive Disparity Study* to Mason Tillman Associates, Ltd, to complete a comprehensive disparity study of Black, Hispanic, and Women-owned business participation in Miami-Dade County contracts issued by Public Works and Waste Management (PWWM) and the Water and Sewer Department (WASD).

Scope

Impact of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the two year term is \$450,000, and the funding source is the General Fund.

Track Record/Monitor

This contract is utilized by the Department of Regulatory and Economic Resources (RER) as the department overseeing all matters related to this study. The contract manager for RER is Veronica Clark. Lydia Osborne in the Internal Services Department is the Procurement Contracting Officer.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise, at their discretion, contract modifications and other extensions in accordance with the terms and conditions of the contract.

Due Diligence

Due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine Contractor responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists that were referenced include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to Contractor responsibility. This information is being provided pursuant to Resolution R-187-12.

Vendor Recommended for Award

Vendor	Principal Address	Principal
Mason Tillman Associates, Ltd.	1999 Harrison Street, Suite 1440 Oakland, CA	Eleanor Mason Ramsey, Ph.D

Vendors Not Recommended for Award

Vendor	Reason for Not Recommending
MGT of America, Inc.	These firms' offers were ranked lower than the recommended proposer.
Browne, Borts & Coddington Inc., d/b/a/ BBC Research & Consulting	
Consortium of Worthy Consultants, Inc.	

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies and will be collected on all purchases.
- A Small Business Enterprise selection factor and Local Preference were applied in accordance with the applicable ordinances.
- The services being provided are not covered under the Living Wage Ordinance.

Background

On July 7, 2011, the Board adopted Resolution R-564-11 directing the County Mayor or the County Mayor's designee to prepare a report regarding actions taken to address data limitations identified in the March 4, 2005 Pre-Disparity Study conducted by MGT of America, Inc. (MGT Report). The pre-disparity study was commissioned in order to evaluate the feasibility of conducting a disparity study to determine if racial, ethnic or gender disparities exist in County contracting. Currently, the County is collecting and compiling data relating to contractors, awards, payments and bidder information identified by the MGT Report.

In May 2012, the Board passed Resolution R-397-12, directing the County Mayor to issue a solicitation for a disparity study of Black (B), Hispanic (H), and Women-owned (W) Business Enterprises, (collectively B/H/WBEs) participation in County contracting for contracts issued by PWWM and WASD. The Board desires to obtain information to evaluate the continued equality of opportunity in County contracts and to ensure that no improper disparity exists in the award of County contracts. Pursuant to R-397-12, the County issued a solicitation for a qualified firm to conduct the study to assess, quantify, and evaluate the prevalence, magnitude and extent of marketplace discrimination, if any, against B/H/WBEs. Four proposals were received in response to the solicitation. The Evaluation/Selection Committee rated and ranked the firms as shown in the attached Evaluation/Selection Committee report.

Attachments



Jack Osterholt
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 18, 2012

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

SUBJECT: Agenda Item No. 14(A)(4)

Please note any items checked.

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(4)

9-18-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT IN THE AMOUNT OF \$450,000 WITH MASON TILLMAN ASSOCIATES, LTD. TO OBTAIN CONSULTING SERVICES FOR A COMPREHENSIVE DISPARITY STUDY OF BLACK, HISPANIC, AND WOMEN OWNED BUSINESS PARTICIPATION IN MIAMI-DADE CONTRACTS ISSUED BY THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT AND WATER AND SEWER DEPARTMENT, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN CONTRACT NO. RFP830

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 execution of an agreement in the amount of \$450,000 with Mason Tillman Associates, Ltd., in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all 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:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of September, 2012. 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.



Oren Rosenthal

Memorandum



Date: June 22, 2012

To: Miriam Singer, CPPO
Assistant Director
Internal Services Department

From: Lydia Osborne *Lydia Osborne*
Procurement Contracting Officer
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 830: Comprehensive Disparity Study

The County issued a solicitation to obtain proposals from qualified firms to conduct a comprehensive disparity study of the procurement practices of the County, to assess, quantify and evaluate the prevalence, magnitude and extent of marketplace discrimination, if any, against Black, Hispanic, and Women-Owned Business Enterprises, regarding participation in County contracts issued by the Departments of Public Works and Waste Management, and Water and Sewer.

The Evaluation/selection Committee (Committee) has completed the evaluation of proposals submitted in response to the solicitation following the guidelines published in the solicitation.

Committee meeting dates:

- June 13, 2012 (kick-off meeting)
- June 20, 2012 (evaluation meeting and scoring)
- June 22, 2012 (evaluation meeting, recommendation)

Verification of compliance with contract measures:

A Small Business Enterprise (SBE) selection factor was assigned to this solicitation. The Committee's Chairperson reviewed the SBE Certification Lists and determined that none of the proposers qualified for the selection factor.

Verification of compliance with minimum qualification requirements:

The solicitation did not have any minimum qualification requirements.

Local Certified Service-Disabled Veteran's Business Enterprise Preference:

Veteran's Preference was considered in accordance with the applicable ordinance. None of the proposers qualified for the preference.

Summary of scores:

The final scores are as follows:

<i>Proposer</i>	<i>Technical Score</i> (max.425)	<i>Price Score</i> (max.75)	<i>Total Combined Score</i> (max.500)	<i>Price/Cost Submitted</i>
1. Mason Tillman Associates, Ltd.	375.8	68.75	444.55	\$475,000
2. MGT of America, Inc.	367.8	64.25	432.05	\$498,061
3. Browne, Borts & Coddington Inc., d/b/a/ BBC Research & Consulting	365.75	62.25	428	\$499,055
4. Consortium of Worthy Consultants, Inc.	128.9	37.5	166.4	\$450,000

The Committee decided not to hold oral presentations as the proposals did not require further clarification.

Local Preference:

Local Preference was considered in accordance with applicable ordinance, but did not affect the outcome, as no local firm was within five percent of the highest ranked firm, Mason Tillman Associates, Ltd.

Other:

Upon review of the score sheets after the Committee meeting of June 20, 2012, it was discovered that a score from one committee member for Mason Tillman Associates, Ltd., was inadvertently omitted by the Chairperson when calculating the composite technical scores. The Chairperson verified the scoring on the Committee member's signed evaluation sheet, and by listening to the tape recording of the meeting. This correction resulted in a higher technical score for Mason Tillman Associates, Ltd., from 347.07 to 375.8. This change affected the outcome of the rankings. Mason Tillman Associates, Ltd. moved from being the third ranked firm, to the highest ranked firm. The Committee was reconvened and advised of the issue. The Committee recommended Mason Tillman Associates, Ltd., as the highest ranked proposer, for negotiations.

Negotiations:

The Committee recommends that the County enter into negotiations with the highest ranked proposer, Mason Tillman Associates, Ltd. The following individuals will participate in the negotiations:

Lydia Osborne, Procurement Contracting Officer, Internal Services Department
Gregory Baker, Division Director, Department of Regulatory and Economic Resources
Rodney McMillan, Special Projects Administrator, Public Works and Waste Management
George Par, Administrative Officer 3, Water and Sewer Department

Consensus Statement:

The Committee determined that the recommended proposer, Mason Tillman Associates, Ltd., possesses the necessary qualifications, relevant experience, and technical capacity to meet the needs of the County. Mason Tillman Associates, Ltd. has performed 117 unchallenged disparity studies since 2000, eight of which were performed for various Florida agencies, including Hillsborough County Aviation Authority, City of Tampa, City of Jacksonville, and Duval County Public School. The firm's subcontractors, Q-Q Research Consultants and Anderson and Associates, P.A., are both Minority Women Owned Business Enterprises (M/WBE), while Infinite Source Communications Group, LLC, is a Miami-Dade County Small Business Enterprise certified company.

The firm's lead individual and Project Manager, Dr. Eleanor Mason Ramsey, has managed all of the 117 unchallenged disparity studies on time and within budget. Dr. Ramsey has over 30 years of experience in core affirmative action services and has evaluated and designed M/WBE programs for states, counties, and cities. The firm's project team members are highly skilled, have collective experience in providing disparity studies for local government entities, and are experienced in navigating the challenges that can easily derail a disparity study.

Mason Tillman Associates, Ltd's proposal provided a well developed and task-appropriate approach to the required services. The firm's approach ensures a close working relationship with the County to address the complexities and challenges that occur in providing the type of consulting services for a project of this magnitude.

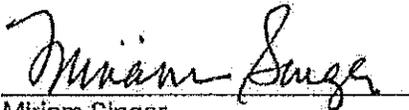
Memo to Miriam Singer
Report of Evaluation/Selection Committee for RFP No. 830, Comprehensive Disparity Study
Page 3

The firm's proposed price is competitive and well within those of similar services. Although the firm's proposed price will be negotiated, the price did not exceed the contractually established ceiling set for this project.

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

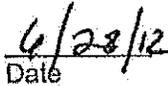
Attachment(s)

Approved



Miriam Singer

Asst. Director



Date

COMPOSITE
RFP NO. 830

COMPREHENSIVE DISPARITY STUDY

EVALUATION OF PROPOSALS

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (Embodied)	Brown, Bortz & Coddington, Inc. dba BBC Research & Consulting	Consortium of Worthy Consultants, Inc.	Mason Tillman Associates, Ltd.	MGT of America, Inc.
Proposer's relevant experience, qualifications, and past performance		30	150	130.4	33.8	130.4	123.5
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		25	125	106.75	39.5	115	109
Proposer's approach to providing the services requested in this Solicitation		30	150	128.5	55.5	129.4	135.3
Technical Points (Technical rows above)		85	425	365.75	128.9	375.8	367.8
Price Criteria:							
Proposer's proposed price		15	75	62.25	37.5	69.75	64.25
Technical and Price Points (Total of Technical & Price rows above)		100	500	428	186.4	444.55	432.05
Selection Factor (10% of the Technical Points Earned on the Technical Portion)				0	0	0	0
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)				0	0	0	0
TOTAL POINTS		100	500	428	186.4	444.55	432.05
Ranking				3	4	1	2

SIGNATURE:

PRINT NAME:

DATE:

Hydra Osborne
Chairperson

HYDRA OSBORNE

6/22/12

Reviewed By:

Janet P. Bethel

6/22/12

EVALUATION OF PROPOSALS
RFP NO. 830

COMPREHENSIVE DISPARITY STUDY

RODNEY McMILLAN (PWWN)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Brown, Bortz & Coddington, Inc. dba BBC Research & Consulting	Consortium of Worthy Consultants, Inc.	Mason Tillman Associates, Ltd.	MGT of America, Inc.
Proposer's relevant experience, qualifications, and past performance		30	25	10	27	24
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		25	20	10	25	20
Proposer's approach to providing the services requested in this Solicitation		30	25	10	25	27
Technical Points (Total of technical rows above)		85	70	30	77	71
Price Criteria						
Proposer's proposed price		15	14	14	14	14
Total Technical and Price Points (Technical & Price rows above)		100	84	44	91	85
Selection Factor of the Total Technical Points on the Technical Portion	(10%)		0	0	0	0
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)			0	0	0	0
TOTAL POINTS		100	84	44	91	85

EVALUATION OF PROPOSALS
RFP NO. 830

COMPREHENSIVE DISPARITY STUDY

GEORGE PAR (WASD)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Brown, Bortz & Coddington, Inc. dba BBC Research & Consulting	Consortium of Worthy Consultants, Inc.	Mason Tillman Associates, Ltd.	MGT of America, Inc.
Proposer's relevant experience, qualifications, and past performance		30	28	10	26	28
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		25	22	15	24	23
Proposer's approach to providing the services requested in this Solicitation		30	27	15	26	29
Technical Points (Total of technical rows above)		85	77	40	76	80
Price Criteria						
Proposer's proposed price		15	14	5	15	14
Total Technical and Price Points (Technical & Price rows above)		100	91	45	91	94
Selection Factor of the Total Technical Points on the Technical Portion (10%)			0	0	0	0
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)			0	0	0	0
TOTAL POINTS		100	91	45	91	94

EVALUATION OF PROPOSALS

RFP NO. 830

COMPREHENSIVE DISPARITY STUDY

GREGORY BAKER (PER)

SELECTION CRITERIA	PROPOSERS	Maximum Points	PROPOSERS			
			Brown, Bortz & Coddington, Inc. dba BBC Research & Consulting	Consortium of Worthy Consultants, Inc.	Mason Tillman Associates, Ltd.	MGT of America, Inc.
Proposer's relevant experience, qualifications, and past performance		30	26.4	7.8	24.9	21
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		25	23.75	9.5	23.75	21.25
Proposer's approach to providing the services requested in this Solicitation		30	27.6	21.6	27.9	25.8
Technical Points (Total of technical rows above)		85	77.75	38.9	76.55	68.05
Price Criteria						
Proposer's proposed price		15	10	15	14	10
Total Technical and Price Points (Technical & Price rows above)		100	87.75	53.9	90.55	78.05
Selection Factor of the Total Technical Points on the Technical Portion)	(10%		0	0	0	0
Veteran's Preference (% of the Total Technical Points on the Technical Portion)			0	0	0	0
TOTAL POINTS		100	87.75	53.9	90.55	78.05

EVALUATION OF PROPOSALS

RFP NO. 830

COMPREHENSIVE DISPARITY STUDY

ALICE HIDALGO-GATO (RER)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Brown, Bortz & Coddington, Inc. dba BBC Research & Consulting	Consortium of Worthy Consultants, Inc.	Mason Tillman Associates, Ltd.	MGT of America, Inc.
Proposer's relevant experience, qualifications, and past performance		30	27	0	27	22
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		25	21	0	22	21
Proposer's approach to providing the services requested in this Solicitation		30	25	3	25	25
Technical Points (Total of technical rows above)		85	73	3	74	68
Price Criteria						
Proposer's proposed price		15	13	0.5	13	12
Total Technical and Price Points (Technical & Price rows above)		100	86	3.5	87	80
Selection Factor of the Total Technical Points on the Technical Portion (10%)			0	0	0	0
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)			0	0	0	0
TOTAL POINTS		100	86	3.5	87	80

Memorandum



Date: June 12, 2012
To: Those Listed Below
From: Carlos A. Gimenez
Mayor 
Subject: Appointment of Selection Committee for Miami-Dade Department of Regulatory and Economic Resources Request for Proposal (RFP) for Comprehensive Disparity Study—RFP No. 830.

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for Miami-Dade Department of Regulatory and Economic Resources Request for Proposal for Comprehensive Disparity Study – RFP No. 830.

Selection Committee

Lydia Osborne, (Non-Voting Chairperson)
Veronica Clark, RER
Alice Hidalgo – Gato, RER
Gregory Baker, RER
George Par, WASD
Rodney McMillian, PWWM
Luciano Soto, PWWM (Alternate)

You are directed to assist me in the selection process considering the factors delineated in the solicitation. If you are unable to participate in the selection process, contact this office through Small Business Development (SBD) by memorandum from your department director documenting the reason why you cannot participate. Only in cases of dire urgency may you be excused from participation.

Each Selection Committee member shall be responsible for evaluating, rating and ranking the proposals based on the criteria and procedure contained in the solicitation. The Selection Committee will meet to review the written proposals. If required, the Selection Committee will select firms to make oral presentations to the Selection Committee at a properly noticed public hearing. If proposers are invited to make oral presentations, the Selection Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness. All requests for responsiveness determinations shall be made in writing by the issuing department to the County Attorney's Office.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Internal Services Department (ISD) may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Upon completion of the evaluation process, the Selection Committee Chairperson shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the recommended firm(s) with attach supporting documentation which MUST include the following information:

Name of firm(s)
Quality Rating Score
Price
Adjusted Score (if applicable)
Committee's Overall Ranking

This report should be submitted to me through ISD for review and consideration.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyist and/or consultants. Selection Committee members are reminded that in accordance with the Cone of Silence Ordinance 98-106, they are restrictions on communications regarding the solicitation with potential proposers, service providers, lobbyists, consultants, or any member of the County's professional staff. Violation of this policy could lead to termination of County service.

All questions must be directed to the staff contact person designated by the issuing department.

- c: Lester Sola, Director, ISD
- John Renfrow, Director, WASD
- Kathleen Woods – Richardson, Director, PWWM
- Jack Osterholt, Deputy Mayor/Director, RER
- Mario Góderich, Assistant Director, Business Affairs/RER

Selection Committee

Lydia Osborne, (Non-Voting Chairperson)
Veronica Clark, RER
Alice Hidalgo – Gato, RER
Gregory Baker, RER
George Par, WASD
Rodney McMillan, PWWM
Luciano Soto, PWWM (Alternate)

**SELECTION COMMITTEE
DEPARTMENT OF REGULATORY ECONOMIC RESOURCES
REQUEST FOR PROPOSAL
COMPREHENSIVE DISPARITY STUDY**

RFP NO. 830

Committee Member/ Title	Department	Start Year With County	Ethnicity/ Gender	Education	Professional License(s)/ Certification(s)	Telephone #
Lydia Osborne (Non – Voting Chairperson)	---	---	---	---	---	---
Veronica Clark Assistant to the Director	RER	1984	Black Female	Bachelor of Business Administration	None	305-375-4770
Alice Hidalgo-Gato Director of Contract Monitoring and Compliance	RER	1995	Hispanic Female	Bachelor of Public Administration	None	305-375-3153
Gregory Baker Director, Consumer Protection	RER	2010	White Male	BBA, MBA, JD	Licensed Attorney	305-375-5557
George Par Special Projects Administrator 1	WASD	2003	White Male	Bachelor of Applied Science in Industrial Engineering	- Certified Professional in Supply Management - Lifetime Certified Professional Purchaser - Professional Engineer	786-552-8950
Rodney McMillian Special Project Administrator	PWWM	1990	Black Male	Master of Science in Management/Pubic Administration	Human Resources Management Certificate	305-375-5320
Luciano Soto Accountant 2 (Alternate)	PWWM	1999	Hispanic Male	Bachelors Degree in Business Management	Real Estate Sales Associate	305-375-2719

Comprehensive Disparity Study

Contract No. RFP830

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Mason Tillman Associates, Ltd., a corporation organized and existing under the laws of the State of California, having its principal office at 1999 Harrison Street, Suite 1440, Oakland, CA 94612-4710 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide consulting services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 830 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 June 6, 2012, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

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

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), Price Schedule (Appendix B), all other appendices and attachments hereto, all amendments issued hereto, RFP No.830 and all associated addenda, and the Contractor's Proposal.
- 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, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Mason Tillman Associates, Ltd. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "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.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- k) 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.
- l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Price Schedule, Appendix B, 4) the Miami-Dade County's RFP No.830 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) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date indicated on the first page of this agreement and shall continue through the last day of the 24th month. 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.

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:

Miami-Dade County
Department of Regulatory and Economic Resources
Small Business Development
111 NW 1st Street, Suite 1900
Miami, Florida 33128
Attention: Small Business Development, Director
Phone: (305) 375-5952
Fax: (305) 375-3160

and,

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Services
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Assistant Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Mason Tillman Associates, Ltd.
1999 Harrison Street, Suite 1440
Oakland, CA 94612-4710

Attention: Dr. Eleanor Mason Ramsey, President
Phone: (510) 835-9012
Fax: (510) 835-2647
E-mail: eramsey@mtaltd.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

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

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

ARTICLE 8. PRICING

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

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. 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 (45) 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.

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

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

Miami-Dade County
Department of Regulatory and Economic Resources
Small Business Development
111 NW 1st Street, 19th Floor
Miami, Florida 33128
Attention: Veronica Clark, Assistant to the Director
Phone: (305) 375-4770
Fax: (305) 375-3160

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

ARTICLE 10. INDEMNIFICATION AND INSURANCE

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

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

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of 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 \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

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 by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

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

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

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

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

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

The Contractor shall be responsible for ensuring 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 Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties 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 appendices 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 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, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

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

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 20. SUBCONTRACTUAL RELATIONS

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

- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

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

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

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

ARTICLE 22. SEVERABILITY

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

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

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

- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be 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.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default 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 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 timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

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

- a) lost revenues;

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

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

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

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

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by

the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

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

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

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors

thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

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

ARTICLE 30. PROPRIETARY RIGHTS

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

common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

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

1. *Miami-Dade County Ownership Disclosure Affidavit*
(Section 2-8.1 of the County Code)
2. *Miami-Dade County Employment Disclosure Affidavit*
(Section 2-8-1(d)(2) of the County Code)
3. *Miami-Dade Employment Drug-free Workplace Certification*
(Section 2-8.1.2(b) of the County Code)
4. *Miami-Dade Disability and Nondiscrimination Affidavit*
(Section 2-8.1.5 of the County Code)
5. *Miami-Dade County Debarment Disclosure Affidavit*
(Section 10.38 of the County Code)
6. *Miami-Dade County Vendor Obligation to County Affidavit*
(Section 2-8.1 of the County Code)
7. *Miami-Dade County Code of Business Ethics Affidavit*
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. *Miami-Dade County Family Leave Affidavit*
(Article V of Chapter 11 of the County Code)
9. *Miami-Dade County Living Wage Affidavit*
(Section 2-8.9 of the County Code)
10. *Miami-Dade County Domestic Leave and Reporting Affidavit*
(Article 8, Section 11A-60 11A-67 of the County Code)
11. *Subcontracting Practices*
(Ordinance 97-35)
12. *Subcontractor /Supplier Listing*
(Section 2-8.8 of the County Code)
13. *Environmentally Acceptable Packaging*
(Resolution R-738-92)
14. *W-9 and 8109 Forms*
(as required by the Internal Revenue Service)
15. *FEIN Number or Social Security Number*
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. *Office of the Inspector General*
(Section 2-1076 of the County Code)
17. *Small Business Enterprises*
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. *Antitrust Laws*
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling

financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. 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 apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, 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 Small 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 without regard to 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 a 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.

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

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

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

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

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

ARTICLE 37. BANKRUPTCY

The County 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. Venue shall be Miami-Dade County.

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 the solicitation referenced on the first page of this Contract, and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. SURVIVAL

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

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

Contractor

Miami-Dade County

By: _____

[Handwritten Signature]

By: _____

Name: Eleanor Mason Ramsey, Ph.D.

Name: _____

Title: President

Title: _____

Date: 07/18/2012

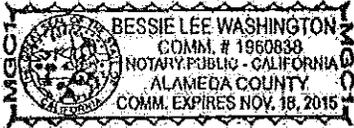
Date: _____

Attest: *[Handwritten Signature]*
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency



Assistant County Attorney

**SCOPE OF SERVICES
APPENDIX A**

1. BACKGROUND INFORMATION

In 1982, Miami-Dade County ("the County") adopted a Black Business Enterprise Program which set aside contracts for participation by certified Black Businesses. Over the next two years, Hispanic and Women Enterprise Programs were added. In September 1996, after a lawsuit challenging the County's Black, Hispanic and Women Business Enterprise programs for construction, the programs were found to be unconstitutional and terminated by the County. Subsequently, a race and gender neutral small business program was adopted for construction in 1997. This was followed by a lawsuit challenging the County's Black, Hispanic and Women Business Enterprise programs for architectural and engineering services. A gender neutral program for architectural and engineering services was adopted in 2001, and in 2005 a race and gender neutral program was adopted for goods and services. The County now administers race and gender neutral programs for all County purchases. Over the years, questions surfaced regarding participation in County's contracting by all segments of the County. A pre-disparity study was commissioned by the Board of County Commissioners ("the Board") to assess the County's capacity to deliver data relevant to a formal disparity study.

On July 7, 2011, the Board adopted Resolution R-564-11 directing the County Mayor or his designee to prepare a report regarding actions taken to address data limitations identified in the March 4, 2005 Pre-Disparity Study conducted by MGT of America, Inc. ("MGT Report"). The pre-disparity study was commissioned in order to evaluate the feasibility of conducting a disparity study to determine if racial, ethnic or gender disparities exist in County contracting. Accordingly, on January 20, 2012, the County Mayor issued a report stating that "the County adopted policies and implemented operational enhancements to address over 90% of [the identified] data limitations, in whole or in part". Currently, the County is collecting and compiling data relating to contractors, awards, payments and bidder information identified by the MGT Report.

On May 1, 2012, the Board passed a Resolution directing the County Mayor to issue a solicitation for a disparity study of Black (B), Hispanic (H), and Women-Owned Business Enterprises (WBE), (collectively B/H/WBEs) participation in County contracting for contracts issued by the Department of Public Works and Waste Management (PWWM), and the Water and Sewer Department (WASD). The Board desires to obtain information to evaluate the continued equality of opportunity in County contracts and to ensure that no improper disparity exists in the award of County contracts issued by PWWM and WASD.

Historically, government agency contracting programs used either race/gender-neutral or race/gender-conscious measures to accomplish program goals. Use of race/gender-neutral measures or race/gender-conscious measures depends on the evidence of the presence or absence of discrimination in contracting opportunities for the relevant industry and locality. Accurate analysis of the evidence is imperative to determine which measures an agency selects for a program. A disparity study is the preferred tool that the County will use to measure utilization of B/H/WBEs, regarding participation in County contracts.

2. OBJECTIVE

The County is contracting with a firm to conduct a Comprehensive Disparity Study ("Study") of B/H/WBEs' participation in County contracting for contracts issued by PWWM and WASD. At the direction of Small Business Development, a division of the Department of Regulatory and Economic Resources (RER), the Contractor shall conduct the study of the procurement practices of the County, to assess, quantify and evaluate the prevalence, magnitude and extent of marketplace discrimination, if any, against B/H/WBEs, regarding participation in County contracts issued by PWWM and WASD. This study shall determine if there is a disparity between the number of businesses owned by blacks, Hispanics and women, that are ready, willing and able to perform services for the County, and the number of these same types of businesses who are actually participating in the same types of contracts issued and awarded by PWWM and WASD.

The Contractor shall work within the legal parameters and jurisprudence that govern the maintenance of permissible affirmative action and minority and/or B/H/WBE programs in connection with this study. The study should address and identify remedies and recommendations that could be implemented by the County, as warranted. If discriminatory practices are found, then corrective actions appropriate to remedy past or current discrimination must be proposed. The results of the study will assist the County with strategies to implement and/or increase the utilization of B/H/WBEs in the procurement of goods and services for the County, in particular for PWWM and WASD, as well as its citizens while developing these firms for continued growth.

3. PREFERRED REQUIREMENTS

The County has relied on the Contractor's proposal to determine that the Contractor has met the preferred requirements below:

- 1) The Contractor should have at least five years experience in the development and conducting of similar disparity studies.
- 2) The Contractor should have at least three disparity studies approved and accepted by the requesting entity.
- 3) The Contractor should be knowledgeable about the County's business environment.
- 4) The Contractor's key personnel, who will perform the Services, should have the knowledge of the policies and regulations regarding minority (in particular Black and Hispanic) and women-owned business enterprises.
- 5) The Contractor should have a working knowledge of the public facilitation and the public participation process in conducting similar studies.

4. THE STUDY

The study shall be accurate, valid and legally defensible, and must analyze and evaluate the evidence of discrimination and its effects separately for each of the groups presumed to be disadvantageous by the County. In addition to the empirical evidence, the study should include an assessment of any anecdotal and compliant evidence of discrimination. The study should quantify the magnitude of any differences between availability and participation.

The study shall consider up to five years of procurement and contracting, and shall be broken into three phases. The performance of Phase III will be driven by the findings of the data analysis of Phase II.

4.1 Phase I

Phase I shall include the development of a Work Plan to evaluate what data the County currently has and the manner in which the data is being collected. This Phase will be capped to an amount no more than ten percent (10%) of the value of the contract.

A. Initial Meeting

The Contractor shall participate in an in-person project planning meeting with the County, to include representatives from RER, PWWM, WASD, Internal Services Department (ISD), and other County Departments, in addition to relevant internal stakeholders, to be scheduled by the County Project Manager.

Once the contract award requirements have been met, the County will issue a Notice to Proceed (NTP), per phase, to the Contractor. The project planning meeting with the County staff shall take place after the award of the Contract, but no later than 30 days after the NTP for Phase 1.

B. Work Plan

While it is the intent of the County to capture data to analyze the utilization or underutilization of B/H/WBEs that are ready, willing and able to participate in the County's contracts issued and awarded by PWWM and WASD, the Contractor shall perform an initial evaluation of the 2005 Pre-Disparity Study conducted by MGT of America, Inc.

Thereafter, the Contractor shall submit a draft Work Plan for conducting the study, to the County's Project Manager for review and approval at the initial meeting above, to allow the County to prepare the data sources that may be required for the tasks herein. The Contractor shall work closely with the County Project Manager to finalize the Work Plan, incorporating the County's recommendations therein.

Once the County has reviewed and submitted its recommendations on the draft Work Plan, the Contractor shall provide one electronic copy of the Final Work Plan to the County Project Manager, no later than 30 days after the initial meeting.

The Work Plan shall contain at a minimum:

- A proposed, not-to-exceed price for providing the services listed herein;
- A time schedule, identifying specific key tasks, deliverables and duration that comply with the requirement to meet the deadlines, as specified in Section 5, Schedule;
- Itemization of the County resources that is expected for the level of participation of the County;
- Assumption of what the County needs to accomplish in order for the County to prepare the data sources that may be required for the study;
- A list of the conditions that may impact the study and the accomplishment of the deliverables;
- A breakdown of how the Contractor shall staff each of the phases, in order to accomplish the tasks.

If the Work Plan is accepted and approved by the County, the County anticipates moving forward with Phase II, and the tasks necessary to accomplish Phase II shall commence immediately. Compensation will be made at this Phase, at the agreed upon capped price. However, if the Work Plan is not approved by the County, and the County and the Contractor do not reach an agreement on the Work Plan, then the Contractor will not be compensated for this Phase, and the Contract will be terminated by the County.

4.2 Phase II

Once the County approves and accepts the Work Plan, the NTP will be issued for Phase II, depending upon the findings. In Phase II, the Contractor shall:

- A. Determine the availability of "ready", "willing" and "able" black, Hispanic and women-owned businesses to participate in the County's contracts. This assessment shall consider capacity as a component of being "able". The County considers ready, willing, and able to perform businesses as those which are capable of providing the required work or services, and available to perform when solicited.
- B. While analyzing availability, precisely define its measure of availability and explain how such availability was calculated.
- C. Ascertain whether a statistically significant disparity exists between the availability of ready, willing, and able B/H/WBES and the utilization of such firms in the County's respective contracts, issued by PWWM and WASD, whether as prime contractors, subcontractors or suppliers.

If the analysis in Phase II reveals an underutilization of B/H/WBES that are ready, willing and able to participate in the County's contracts issued and awarded by PWWM and WASD, the Contractor shall undertake Phase III, and research and analyze the reasons for such underutilization. Any statistical disparity findings must be well documented by quantitative data.

Should the work in Phase II reveal no statistically significant disparity, the Contractor shall still recommend race neutral activities the County can undertake to improve or modify its contracting and procurement processes to the extent necessary to ensure that all businesses have a fair and adequate opportunity to participate in the County's procurement and contracting processes.

4.3 Phase III

If the County decides to move forward with Phase III, the NTP will be issued for this phase. In Phase III, the Contractor shall:

- A. Determine the reasons for underutilization findings in the data analysis. This research should consist of, but not limited to: in-depth personal interviews of business firms, government procurement personnel, trade professional associations, focus groups, public hearings, telephone surveys, mail surveys, and media archives. If evidence of discrimination exists, the Contractor shall assess the extent to which:
- a) The effects of discrimination can be addressed through race and gender neutral means, and whether narrowly tailored race and gender specific remedies would be effective.
 - b) Other barriers unrelated to race or gender may be adversely affecting contract participation by B/H/WBEs.
 - c) Race and gender neutral policies and programs that have been previously used by the County to address those identified neutral barriers.
- B. Where appropriate, the Contractor shall make recommendations for alternative policy and program directions based on legally defensible best practices.

5. REQUIREMENTS AND SERVICES TO BE PROVIDED

In order to complete the three Phases discussed above, the Contractor shall:

- 1) Identify the categories of contracts for goods, services and construction typically issued and awarded by the County for PWWM and WASD; the number of contracts; and dollar amounts spent in each category for the five year period.
- 2) Interview County staff, to include procurement professionals, who are responsible for issuing contracts for PWWM and WASD, in the areas of, but not limited to, construction, design services including architecture and engineering, goods, non-technical services, concessions, and professional and technical services, and other services regarding the methods of contracting and types of contracts issued, procurement policies, actual procurement practices, and the market areas covered by solicitations, advertising and mailing.
- 3) Design and administer a survey to contractors, subcontractors, vendors and bidders (by ethnic group and gender) as to the type of work; capacity and utilization on various types of contract issued by PWWM and WASD; reasons for levels of utilization; identification of any forms and instances of discrimination (past and present) experienced by survey respondents; the effects and sources of past and present discrimination; and interest in bidding or submitting proposals on County contracts issued by PWWM and WASD.
- 4) Conduct primary interviews of a cross section of business owners (i.e., various ethnic, gender, and industry categories) in the County to identify barriers to business formation, utilization, and growth. Document any particularized accounts of marketplace discrimination, including details about the forms of discrimination experienced (stereotypical attitudes, good old boys networks, unequal access to capital, unfair denial of opportunity to bid, pre-qualification requirements); background about particular incidents (i.e., who, what, when, how, and why). Also interview minority and non-minority trade association representatives and government staff that may have some insight into general industry and market dynamics that may be affecting the formation, growth and participation of B/H/WBE firms.
- 5) Define the relevant market for assessing the availability of B/H/WBEs that might participate in the County's contracts issued and awarded for PWWM and WASD.
- 6) Determine the availability of B/H/WBE, ready, willing and able to perform, by ethnic group, gender, and capacity, in the relevant market areas for each category of goods, services, and construction procured by PWWM and WASD at the prime and subcontractor level. In analyzing availability, the Contractor shall precisely define its measure of availability, and provide firms used to calculate availability.

- 7) Determine the availability of non-certified firms, by ethnic group, gender and capacity, in the County that appear to be eligible to meet the requirements for such race-neutral business categories.
- 8) Analyze any available judicial or administrative public hearing transcripts, summaries, or findings as to allegations of commercial discrimination made against contractors, subcontractors, vendors, consultants and local government agencies.
- 9) Analyze the contracting and procurement practices of the County for a five year period and calculate the share of contracts, issued by PWWM and WASD, awarded to B/H/WBEs, as either contractors or subcontractors. Study shall consider total awards, payments and annual trends.
- 10) Devise a disparity model, and using said model, identify any disparity existing between the County's utilization of B/H/WBE and their availability in the overall relevant market. The disparity model should be created using appropriate statistical methodology. If a disparity is found to exist, the relevance and significance of such disparity will be documented and explained through statistical analyses, comparing the utilization of minority and women owned business in the County's contracts issued by PWWM and WASD, with the availability of such firms in the relevant market, categorized by industry, race, ethnicity and gender.
- 11) Obtain and analyze prior disparity and availability studies that relate to the County, and to the extent possible reconcile or distinguish those studies with the current findings. Study shall review these previous disparity study recommendations and indicate progress towards implementing the study recommendations.

Should work completed in Phase II reveal a statistically significant disparity, the Contractor shall, in Phase III:

- 12) Conduct a detailed, in-depth review of the County's purchasing and contracting policies and procedures to determine whether any of the County's policies and procedures or practices discriminate or have a discriminatory effect based upon race, ethnicity, or gender in the awarding of contracts or subcontracts.
- 13) Determine and evaluate the extent to which any identified disparity has likely been caused in part by unlawful race or gender discrimination. This will entail identifying, collecting and evaluating any and all relevant statistical, historical, sociological and anecdotal evidence. It will also require documenting and analyzing factors or variables that may have impeded the formation, growth, availability, or utilization of B/H/WBE, and that may have been directly affected by the effects of past discrimination or by ongoing discriminatory practices against B/H/MBE with the County's relevant market. This analysis shall determine if discrimination has had an adverse effect on the ability of B/H/WBE to compete successfully in the County's contracting and procurement process.
- 14) Perform an analysis to determine the extent to which identified disparities may be attributable to various factors including race, gender and other factors that appear to be neutral (such as length of time in business and size of business).
- 15) Perform an analysis to gauge whether a disparity is present in racial or gender access to commercial credit in the marketplace. If discrimination is identified, determine to what extent each respective race has been subjected to discrimination.
- 16) Identify and evaluate the effectiveness of any race/gender neutral initiatives that have been used by the County in eliminating discrimination and or increasing B/H/WBE participation in public contracting. Determine also the availability of race/gender neutral alternatives open to the County and assess the potential effectiveness of such programs in eliminating the effects of any identified discrimination against B/H/WBEs.

- 17) Make recommendations for activities to remedy the effects of discrimination identified, and to reduce or eliminate any other marketplace barriers that adversely affect the contract participation of such B/H/WBE and other activities the County can undertake to improve or modify its contracting and procurement processes to the extent necessary to ensure that all businesses, including B/H/WBE have a fair and adequate opportunity to participate in the County's procurement and contracting processes.
- 18) Assist the County, as necessary, in preparation of testimony and presentation of the study findings and recommendations to their respective governing bodies.

Note: Should any independent review of the methodology used to complete the study reveal inadequate methodologies to have been used which are not consistent with current legal renderings, the Contractor agrees to make any necessary modifications and conduct any subsequent work necessary to achieve study adequacy and appropriateness at no additional cost to the County.

6. DELIVERABLES

In order to provide the deliverables specified below, the Contractor will be expected to perform the above listed services at appropriate points during the Contract. The list is not all inclusive and shall only be considered a guideline for expected work required to complete the study. The Contractor shall perform all tasks necessary to provide the agreed upon deliverables in accordance with applicable legal and industry standards, regardless of whether such tasks are listed herein.

Due dates can be extended or amended under the County Project Manager's authority. Teleconferencing or other electronic communication between the Contractor and the County may occur periodically or as required by the County Project Manager.

7. REPORTS

The Contractor shall:

- 1) Prepare a Draft Report, describing in detail the Contractor's methodology and findings for Phase II (Section 2.4.2), and shall provide five copies in an approved format, on or before January 31, 2013, to the County's Project Manager for review and comment. The County's Project Manager will review the draft document and provide the Contractor with feedback within 45 days of receipt of said document.
- 2) Prepare a Draft Phase III Report, describing in detail the Contractor's methodology and findings for Phase III, and shall provide five bound hard copies and three CDs or other approved format, on or before June 15, 2013, to the County's Project Manager for review and comment. The County's Project Manager will review the draft document and provide the Contractor with feedback within 45 days of receipt of said document.
- 3) Provide ten bound hard copies and three CDs or other approved format of each of the Final Reports (Phase II & III), after incorporating County's feedback, to the County Project Manager, no later than 30 days after County has returned the Initial Draft Reports with feed back to the Contractor.

8. DISPARITY STUDY AND EXECUTIVE SUMMARY

A. Disparity Study

The Contractor shall:

- 1) Prepare a Draft Disparity Study, if applicable, incorporating all the findings for Phases II & III, and shall provide ten bound hard copies and three CDs or other approved format, on or before November 30, 2013, to the County's Project Manager for review and comment. The County's Project Manager will review the draft document and provide the Contractor with feedback within 60 days of receipt of said document.

- 2) Provide ten bound hard copies and three CDs or other approved format of the Final Disparity Study, after incorporating County's feedback, to the County Project Manager, no later than 30 days after County has returned the Initial Draft Report with feed back to the Contractor.

The Study may include, but is not limited to the following sections:

- An executive summary of findings and conclusions.
- Definition section.
- Background, including a detailed description of all pertinent methodologies, results, discussion, conclusion, and recommendations.
- A section analyzing complaint data and recent legal cases for trends and other anecdotal evidence.
- An Assumptions section, identifying all conditions that impact the analysis.
- A methodology section, describing the methodology the Contractor used in its data collection and evaluation, availability analysis, utilization analysis, and anecdotal evidence.
- Description of data sources analyzed, including summaries of data.
- Availability analysis, utilization analysis, statistical disparity analysis, and analysis of the County's purchasing policies and procedures and other anecdotal evidence which may impact disparity.
- A description of all methodologies used in arriving at the conclusions.

B) Executive Summary

The Contractor shall:

- 1) Prepare a Draft Executive Summary, which should provide adequate and useable detail regarding the contents of the full study, and shall provide ten bound hard copies and three CDs or other approved format, on or before November 30, 2013, to the County's Project Manager for review and comment. The Summary should be clear and succinct so it can be easily referenced and used. The County's Project Manager will review the draft document and provide the Contractor with feedback within 60 days of receipt of said document.
- 2) Provide one hard copy and one CD or other approved format of the Final Executive Summary, after incorporating County's feedback, to the County Project Manager, no later than 30 days after County has returned the Initial Draft Report with feed back to the Contractor.

Notes: The study and executive summary shall be: a) written in clear and concise language using consistent terms; b) easy to understand; c) organized in a logical manner; d) fully illustrated with relevant examples; and e) consistent with widely accepted methodology.

9. DATABASE

The Contractor shall provide, in format approved by the County, a computerized database of all data and records developed in performing the Services that will permit future use of such data and records by the County.

10. FINAL PRESENTATION

The Contractor shall give a final presentation of the Disparity Study, once completed, submitted and accepted by the County, to a) the Board, if required by the Board; b) administration from WASD, PWWM, and all divisions of RER; and c) other internal divisions as determined by the County Project Manager. The final presentation will summarize the findings and recommendations of the study.

11. OPTIONAL IMPLEMENTATION AND SUPPORT SERVICES

The County may require the Contractor to:

- A. Attend additional meetings as the project progresses into the implementation phase. Any additional requests for on-site meetings and presentations from the County during the implementation phase shall be considered implementation and support services.
- B. Support and assist the County in the successful defense of any legal challenges resulting in the implementation of any remedial actions or recommendations, as a result of the study.
- C. Provide ongoing support throughout the implementation process. This shall include but not be limited to assistance with training to County staff, on discriminatory practices and any other related topics.
- D. As necessary, assist the County in the development or modification of specific administrative practices, procedures, and/or policies that are supported by the study findings.

Note: Optional hourly rates for the optional implementation and support services should be priced separately and shall remain fixed for at least a period of five years from the original contract award date.

12. STATUS UPDATES/MEETINGS

The Contractor shall report to the County Project Manager the details of the on-going progress of the project. The Contractor shall initially provide written project status updates to the County's Project Manager, in addition to attending in-person meetings to assess the progress report. While the exact number of meetings is not known, the County Project Manager may conduct such meetings via teleconferencing to reduce costs. The frequency of these meetings will be dictated by timeliness in meeting the timetable and the quality of the work product. The meetings will be scheduled by the County Project Manager.

13. SCHEDULE

The Contractor shall prepare and submit to the County the Final Disparity Study and an Executive Summary, no later than February 28, 2014. The Executive Summary must be a clear, organized and succinct summary that includes recommendations for alternative policy and program directions based on legally defensible best practices. The Study will be used in evaluating and making recommendations for implementing B/H/WBE programs, and or expanding M/WBE programs for the County. The results and recommendations will serve as a reference document in the creation of directives, standards and practices.

Reference	Benchmark/Milestones	Due Dates (no later than)
N/A	a) Award of Contract	August 1, 2012
Section 2.4.1(B)	a) Phase I - Completion of Work Plan	October 1, 2012
Section 2.4.2	a) Phase II Draft Report	January 31, 2013
	b) Final Phase II Report	April 15, 2013
Section 2.4.3	a) Phase III Draft Report	June 15, 2013
	b) Final Phase III Report	September 30, 2013
Section 2.8	a) Draft Executive Summary	November 30, 2013
	b) Draft Disparity Study	November 30, 2013
	c) Final Executive Summary	February 28, 2014
	d) Final Disparity Study	February 28, 2014
Section 2.10	a) Presentation of Disparity Study	March 2014
Section 3	a) Optional Implementation and Support Services	TBD

14. COMPENSATION

The Contractor will be paid on a benchmark basis, upon completion of Phases 1 through 3 (see Section 2.4 of Scope of Services). Completion of a phase shall be measured as fulfillment of all services required for that phase, including submission to, and final acceptance by the County of any deliverable, unless otherwise negotiated. The compensation to the Contractor for this project will not exceed \$450,000. All payments are contingent upon completion of each Phase. Refer to Appendix B, Price Schedule for schedule of payments.

**Appendix B
Price Schedule**

A. PRICE (Not-to-exceed \$450,000)

The price shown below is for providing all Required Services as stated in the Scope of Services, Appendix A, excluding Section 11, Optional Implementation and Support Services, for the term of the contract. The project milestones include services necessary to complete the phases.

Benchmarks/Project Milestones	Price (Phases 1-3)
Completion of Phase I (Section 4.1) and acceptance of the Work Plan by the County. This Phase will be capped to an amount up to 10% of the value of the Contract.	\$45,000
Completion of all required tasks for Phase II (Section 4.2)	\$315,000
Completion of all required tasks for Phase III (Section 4.3)	\$90,000

B. OPTIONAL IMPLEMENTATION AND SUPPORT SERVICES

The County may, at its sole discretion, require the optional implementation and support services listed in Section 11. The Proposer not-to-exceed hourly rates for the various staff levels shown below are for performing such services

Personnel	Title	Hourly Rate
Eleanor Mason Ramsey, Ph.D	Project Manager/Lead Individual	\$250.00
Edward Norton, LL.B	Chief Legal Advisor	\$225.00
Judge Henry Ramsey Jr. Retired	Legal Advisor	\$205.32
Allura Scott, Esq.	Anecdotal Manager	\$170.00
Mike Leong, M.S.	Senior Statistician	\$138.00
Robert Ramsey, M.S.	Statistician	\$125.00
Ren Wang, Ph.D. (ABD)	Economist	\$119.00
Antonía Sallina, M.S.	Database Manager	\$ 95.00
Ilann Messeri, M.P.P.	Public Policy Specialist	\$ 75.00
Linda Tran, M.P.P.	Public Policy Specialist	\$ 75.00
Rodney Littles	Anecdotal Interviewer	\$ 62.42
Raymond Wiley	Anecdotal Interviewer	\$ 62.42

Notes:

1. The price shall be guaranteed for the duration of the Contract, including any extension periods, and shall include all costs necessary to provide the services as described in this Solicitation.
2. The price and not-to-exceed hourly rates shall include all costs such as, full compensation for labor, all out-of-pocket expenses, such as travel, per diem, and miscellaneous costs and fees, which shall be incorporated in this Price Schedule, as they will not be reimbursed separately by the County.
3. Contractor may bill periodically, but not more than once per month (Refer to Article 8, Method and Times of Payment). Compensation for Phases 1 through 3 are as follows:
 - a. Phase 1 is contingent upon completion in its entirety, and acceptance by the County. The invoice for Phase 1 shall not exceed \$45,000 (10% of the contract).
 - b. Phase 2 may be billed throughout the phase. However, compensation will not exceed 70% of the contract (\$315,000). Final payment in this phase will not be made until all of the deliverables are completed and accepted by the County.
 - c. Phase 3 may be billed throughout the phase. However, final payment in this phase will not be made until the Final Disparity Study is completed and accepted by the County.
4. The not-to-exceed hourly rates for the Optional Implementation and Support Services are fixed for the duration of the Contract including any extension periods.
5. The County may require a breakdown of the price, itemized by position, estimated time on the project of said position, and maximum individual rates for Principal, Statisticians, and other key personnel, prior to contract award. The positions identified in the table above, shall be the same as the key positions identified in the Contractor's proposal that will be performing the Services.

Initials

Revised 7/23/12



MEMORANDUM

Agenda Item No. 11(A)(6)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: May 1, 2012

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

SUBJECT: Resolution directing the County Mayor to issue a solicitation for a disparity study of black, Hispanic, and women owned business participation in County contracting for contracts issued by the Department of Public Works and Waste Management and the Water and Sewer Department

Resolution No. R-397-12

This item was amended by the Infrastructure and Land Use Committee to increase the time allowed for the administration to bring an award recommendation back to the Board from 120 to 180 days.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson, and Co-Sponsors Commissioner Barbara J. Jordan, Commissioner Jean Monestime and Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/up



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: May 1, 2012

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

SUBJECT: Agenda Item No. 11(A)(6)

Please note any items checked.

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

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(6)
5-1-12

RESOLUTION NO. R-397-12

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ISSUE A SOLICITATION FOR A DISPARITY STUDY OF BLACK, HISPANIC, AND WOMEN OWNED BUSINESS PARTICIPATION IN COUNTY CONTRACTING FOR CONTRACTS ISSUED BY THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT AND THE WATER AND SEWER DEPARTMENT

WHEREAS, the Miami-Dade County is a multi-ethnic community; and

WHEREAS, the County is an important economic engine in the growth and development of Miami-Dade County; and

WHEREAS, the County wishes to continue to ensure equal opportunity to be awarded County contracts for all members of the community; and

WHEREAS, the Board of County Commissioners desires to obtain information to evaluate the continued equality of opportunity in County contracting and to ensure that no improper disparity exists in the award of County contracts; and

WHEREAS, federal courts reviewing legislation addressing improper disparity in government contracting look at data collected to assess the Constitutionality of such legislation; and

WHEREAS, the County's failure to collect this information at the time of contracting presented a significant obstacle and an extraordinary cost in the County's prior defense of its race and gender based contracting programs; and

WHEREAS, on July 7, 2011, this Board adopted Resolution R-564-11 directing the County Mayor or his designee to prepare a report regarding actions taken to address data limitations identified in the March 4, 2005 Pre-Disparity Study conducted by MGT of America, Inc. ("MGT Report") in an effort to evaluate the feasibility of conducting a study to determine if racial, ethnic or gender disparities exist in County contracting; and

WHEREAS, on January 20, 2012, the County Mayor issued a report stating that "the County adopted policies and implemented operational enhancements to address over 90% of [the identified] data limitations, in whole or in part"; and

WHEREAS, this County is collecting and compiling data relating to primes, subcontractors, awards, payments and bidder information identified by the MGT Report; and

WHEREAS, this Board desires to utilize this data to conduct a disparity study of black, Hispanic and women owned business participation in County contracting for contracts issued by the Department of Public Works Waste Management and the Water and Sewer Department,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the County Mayor or County Mayor's designee is hereby directed create and issue a solicitation for a disparity study of black, Hispanic and women owned business participation in County contracting for contracts issued by the Department of Public Works and Waste Management and the Water and Sewer Department within thirty (30) days of the adoption of this resolution and to recommend the award of a contract resulting from this solicitation within one hundred and ~~[[twenty (120)]]~~¹ ~~>>eighty (180)<<~~ days of the adoption of this resolution.

¹ Committee amendments are indicated as follows: Words stricken through and/or [[double bracketed]] are deleted, words underscored and/or >>double arrowed<< are added.

The Prime Sponsor of the foregoing resolution is Vice Chairwoman Audrey M. Edmonson, and the Co-Sponsors are Commissioner Barbara J. Jordan, Commissioner Jean Monestime and Commissioner Rebeca Sosa. It was offered by Commissioner Sally A. Heyman who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

	Joe A. Martinez, Chairman	aye	
	Audrey M. Edmonson, Vice Chairwoman	aye	
Bruno A. Barreiro	aye	Lynda Bell	aye
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of May, 2012. 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: Christopher Agrippa
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

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