Memorandum

MIAMI-DADE COUNTY

Date: October 12, 2021

TMPC
Agenda Item No. 3(B)

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Subject: Recommendation for Approval to Award a Legacy Contract: Advanced Traffic Management System Maintenance Agreement; and Authorizing the Use of Charter County Transportation Surtax Funds for Such Purpose

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve this request to award *Legacy Contract No. L-10134, Advanced Traffic Management System Maintenance Agreement,* for the Department of Transportation and Public Works (DTPW) in the amount of $4,950,000 pursuant to Section 2-8.1(b)(2) of the Miami-Dade County Code. This contract with Kimley-Horn and Associates, Inc. (Kimley-Horn) will provide ongoing maintenance and operational support services for the existing Advanced Traffic Management System (ATMS) central software (KITS); and will also provide ongoing operational support for the existing third party ATMS central software (CENTRACS).

This item is placed for Board review pursuant to Miami-Dade County Code Section 29-124(f). The Board may only consider this item if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for Board consideration or 45 days have elapsed since the issuance of this recommendation. If CITT has not forwarded a recommendation and 45 days have not elapsed since the issuance of this recommendation, a withdrawal of this item will be requested. Further, it should be noted that of the $4,950,000 being requested, $1,600,000 or 32 percent will come from Charter County Transportation Surtax Funds.

Background

The ATMS system provides solutions to the County to alleviate congestion by adapting to traffic conditions occurring on urban freeways and surface streets through the deployment of state-of-the-art sensing, communications and data-processing technologies. The ATMS takes advantage of information that can be provided by roadside traffic sensors. These systems use available traffic information to develop optimal traffic control strategies addressing traffic needs. DTPW operates and maintains over 2,900 signalized intersections on state, county, and local roads within the County's geographical boundaries; and monitors and manages the intersections from the Traffic Management Center.

On July 7, 2005, the Board, through Resolution No. R-876-05, awarded Contract No. 20050189 to Kimley-Horn as a non-competitive (single source) negotiated agreement to furnish and install an Advanced Traffic Management System. The Kimley-Horn system replaced the Traffic Control System that monitored and controlled traffic signals in the County for 29 years. The contract term with Kimley-Horn was July 18, 2005 through July 17, 2021. The Kimley-Horn ATMS is comprised of traffic signal controllers furnished by McCain, Inc. that monitor and operate over 2,600 signalized intersections countywide.

On May 4, 2020, Contract No. RFP-01058, Advanced Traffic Management System, was awarded by the Board to Siemens Mobility, Inc. (Siemens) for the purpose of installing the new Siemens ATMS to manage traffic flow in real time. The contract is valued at $160,173,671 for a nine-year term. As such, Kimley-Horn's software and hardware will be replaced by Siemen's software and hardware, to be used with Siemens' ATMS. Both systems will be in operation concurrently from 2021-2024, and once the Siemens ATMS is fully operational, use of the Kimley-Horn ATMS will be discontinued.

The Kimley-Horn ATMS is now obsolete. After 16 years of service, there is technology now available that can improve mobility beyond the current system. The 2070LX Controller that will be provided by Siemens, under Contract No. RFP-01058, will allow the County to upgrade existing intersections to a higher performance platform. Other improvements include additional vehicle (including bicycle) and pedestrian detection at signalized intersections and vehicle detection zones necessary for supporting Transit Signal Priority and Adaptive Signal Timing operations. The Transit Signal Priority and Adaptive Signal Timing is a traffic management strategy in which traffic signal timing changes, or adapts, based on actual traffic demand.

The ongoing maintenance and support services for the Kimley-Horn ATMS includes: software diagnosis and resolution; database administration support; software conceptual design and integration support; minor software enhancements; servers upgrade support; and customization of the existing software functions and features as requested by County staff. In addition, DTPW requires operational support services that include technical, onsite, and/or field support to the County for the operation of controllers operating with Kimley-Horn's software.

Competition for these services is not practicable at this time because of the proprietary nature of the software installed in the current Kimley-Horn ATMS-KITS software is the intellectual property of Kimley-Horn and is proprietary to Kimley-Horn. No other firm is authorized to access the KITS source code, which is required for KITS maintenance and operational support. In consideration of KITS being replaced with the Siemens ATMS over the next three years, purchasing a competitively solicited interim software is not in the best interest of the County due to the short-term requirement to maintain the Kimley-Horn ATMS. The need for future legacy purchases has been eliminated through the award of competitive Contract No. RFP-01058.

Accordingly, it is in the County's best interest to award this legacy contract pursuant to Section 2-8.1(b)(2) of the County Code to continue purchasing these critical maintenance and support services.

Scope
The scope of this item is countywide in nature.

Fiscal Impact/Funding Source
The fiscal impact for the five-year term is $4,950,000. Project funding is split between Road Impact Fees $3,350,000 and People's Transportation Plan (PTP) $1,600,000. The allocation under the current agreement with DTPW is higher than this legacy contract because the scope encompasses a higher level of effort and the term is longer. A portion of this item is funded by Charter County Transportation Surtax Funds.

Department	Allocation	Funding Source	Project Manager
Transportation and Public Works	$4,950,000	Road Impact Fees/ Charter County Transportation Surtax Funds	Evelin Legcevic
Total:	**$4,950,000**		

Track Record/Monitor
Vanessa Stroman of the Internal Services Department is the Procurement Contracting Manager. Frank Aira, Chief, Traffic Signals and Signs Division, DTPW, is responsible for this project.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

Pursuant to Resolution No. R-477-18, this legacy contract is being awarded to a non-local vendor due to competition for these services being impracticable, for the reasons previously mentioned.

Vendor	Principal Address	Local Address*	Number of Employee Residents 1) Miami-Dade 2) Percentage*	Principal
Kimley-Horn and Associates, Inc.	421 Fayetteville Street Suite 600 Raleigh, NC	1200 South Pine Island Road Plantation, FL	82 1.52%	Steven E. Lefton

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

Due Diligence

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

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise measures do not apply.
- The Local Preference does not apply.
- The Living Wage does not apply, as this is not a service covered by the Living Wage Ordinance

Jimmy Morales
Chief Operations Officer

MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 2, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**

✓ _____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor Agenda Item No.
Veto _____
Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AWARD OF A LEGACY CONTRACT FOR ADVANCED TRAFFIC MANAGEMENT SYSTEM MAINTENANCE AGREEMENT FOR THE TRANSPORTATION AND PUBLIC WORKS DEPARTMENT, CONTRACT NO. L-10134, TO KIMLEY-HORN AND ASSOCIATES, INC., FOR A FIVE-YEAR TERM IN A TOTAL AMOUNT NOT TO EXCEED $4,950,000.00 AND APPROVING TERMS OF AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE CONTRACT AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS IN THE AMOUNT OF $1,600,000.00 FOR THESE PROJECTS WHICH ARE CONTAINED IN THE ORIGINAL EXHIBIT 1 OF THE PEOPLE'S TRANSPORTATION PLAN SECTION RAPID TRANSIT IMPROVEMENTS

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

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

Section 1. This Board authorizes award of a legacy contract pursuant to Section 2-8.1(b)(2) of the County Code to Kimley-Horn and Associates, Inc., for a five-year term in an amount not to exceed $4,950,000.00 for Contract No. L-10134, in substantially the form attached hereto and made a part hereof, for the advanced traffic management system maintenance agreement for the Transportation and Public Works Department.

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

Section 3. The Board authorizes the use of Charter County Transportation Surtax Funds in the amount of $1,600,000.00 for this project which is contained in the original Exbibit 1 of the People's Transportation Plan Section Rapid Transit Improvements.

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:

Jose "Pepe" Diaz, Chairman
Oliver G. Gilbert, III, Vice-Chairman

Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of November, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

ADVANCED TRAFFIC MANAGEMENT SYSTEM MAINTENANCE AGREEMENT
CONTRACT NO. L-10134

THIS AGREEMENT made and entered into as of this _____ day of _____, 2021 by and between Kimley-Horn and Associates, Inc., organized and existing under the laws of the State of Florida, having its principal office at 355 Alhambra Circle, Suite 1400, Coral Gables, Florida 33134 (hereinafter referred to as the "Consultant"), 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 Consultant has offered to provide software maintenance and operational support services for the County's Advanced Traffic Management System, on a non-exclusive basis, that shall conform to the Scope of Work, Appendix A; and,

WHEREAS, the County desires to procure from the Consultant such software maintenance and operational support services for the County, in accordance with the terms and conditions of this Agreement;

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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 and the Scope of Work (Appendix A).

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 "Consultant" to mean Kimley-Horn and Associates, Inc. and its permitted successors.

e) The word "Days" to mean calendar days unless business days are explicitly noted.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Consultant 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" to mean 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 Mayor or the duly authorized representative designated to manage the Project.

j) The words "Scope of Work" to mean the document appended hereto as Appendix A, which details the work to be performed by the Consultant.

k) The word "Subconsultant" or "Sub consultant" to mean any person, entity, firm or corporation, other than the employees of the Consultant, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Consultant and whether or not in privity of Contract with the Consultant.

l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Consultant 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, and 2) the Scope of Work (Appendix A).

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 Consultant shall provide the services set forth in the Scope of Work, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Consultant 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 Consultant shall perform the same as though they were specifically mentioned, described and delineated.

d) The Consultant 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. However, the County acknowledges that timely input and cooperation from the County will be required at all times and any delays or costs incurred by either party as a result of the lack of such timely cooperation from the County shall be borne solely by the County. All Work and Services shall be accomplished at the direction of and to the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided ("Standard of Care") and to the reasonable satisfaction of the County's Project Manager, in accordance with Appendix A and the Parties' established metrics, milestones and plans during the Term of this Agreement.

e) The Consultant acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Work. The Consultant agrees to provide input on policy issues in the form of recommendations. The Consultant agrees to implement all commercially reasonable changes in providing Services hereunder as a result of a policy change implemented by the County. The Consultant 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. The County shall be responsible for all resources and change fees required to implement its policy decisions and requested changes, if any, to the Scope of Work.

Article 5. CONTRACT TERM

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the fifth (5rd) year, thereafter. The County may extend this Contract for up to an additional one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Consultant 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 Consultant, upon approval by the Board of County Commissioners (the "Board").

Article 6. NOTICE REQUIREMENTS

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

(1) To the County

a) To the Project Manager:
Miami-Dade County
Attention: Evelin Legcevic
Phone: ((305) 679-0042
E-mail: Evelin.Legcevic@miamidade.gov

and,

b) To the Contract Manager:
Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 N.W. 1st Street, Suite 1375, Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Consultant
Kimley-Horn and Associates, Inc.
Attention: John McWilliams
Phone: (954) 535-5106
E-mail: John.McWilliams@kimley-horn.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 Consultant warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Consultant deemed necessary in order to determine the price the Consultant will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in **the total not-to-exceed amount of Four Million Nine Hundred Fifty Thousand Dollars ($4,950,000.00)**. The County shall have no obligation to pay the Consultant 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 Consultant.

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

Article 8. PRICING

a) The Consultant's hourly billing rates shall remain firm and fixed for the term of the Contract, including any extension periods; however, the Consultant may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

b) Work Orders
Work authorization, as Work Orders, will be negotiated assuming compensation as a fee, based on fixed rates as described in Subsection e (Table 8.1) below, resulting in a firm fixed lump-sum or pre-negotiated maximum amount for each Work Order.

c) Fees Based on Lump Sums
The fee for services rendered by the Consultant's personnel shall be a lump sum mutually agreed upon by the County and the Consultant and stated in the written Notice to Proceed ("NTP") for a Work Order. Lump sum fees may or may not include reimbursable expenses.

d) Fees Based on Fixed Category Billing Rates
The fee for services rendered by the Consultant's personnel shall be based on pre-negotiated maximum values for each task, to be computed based on the category billing rates in Table 8.1. For tasks compensated using fixed billing rates, invoices for the Consultant's labor shall identify the individuals and the hours worked on each Work Order for the invoice period.

The Consultant agrees at all times to provide the most cost-effective personnel to accomplish the tasks set forth in this contract. In the event that the County at any time believes that the tasks assigned to the Consultant which are compensated using billing rates may be performed by individuals with lower billing rates, ii shall so notify the Consultant in writing. The Consultant agrees, within ten days of the County's written request, to evaluate such a request, and where appropriate and necessary in the opinion of the Consultant to satisfy the Consultant s obligations under this Section, to (i) replace any personnel performing tasks that may be accomplished by a person in a lesser billing rate or (ii) continue using the same person but invoice the County at the lesser billing rate. In the event that the Consultant in good faith believes the County's request cannot be reasonably accommodated, ii shall within ten days direct a written explanation to the County of the reasons for the Consultant's denial.

e) The Consultant shall provide contract service, in accordance with the following billing rates:

TABLE 8.1 – HOURLY RATE SCHEDULE

Item No.	Classification	Unit	Rate (Year 1)	Rate (Year 2)	Rate (Year 3)	Rate (Year 4)	Rate (Year 5)
1.1	Program Manager	Hourly Rate	$347.54	$354.49	$361.58	$368.81	$376.19
1.2	Project Manager	Hourly Rate	$257.17	$262.31	$267.56	$272.91	$278.37
1.3	Senior Systems Specialist	Hourly Rate	$191.05	$194.87	$198.77	$202.74	$206.80
1.4	Systems Specialist	Hourly Rate	$132.25	$134.90	$137.59	$140.34	$143.15
1.5	Senior Software Programmer	Hourly Rate	$183.68	$187.35	$191.10	$194.92	$198.82
1.6	Software Programmer	Hourly Rate	$139.60	$142.39	$145.24	$148.14	$151.11
1.7	ATMS/ITS Engineer	Hourly Rate	$139.60	$142.39	$145.24	$148.14	$151.11
1.8	Analyst/Technical Support	Hourly Rate	$102.87	$104.93	$107.03	$109.17	$111.35
1.9	CADD Designer	Hourly Rate	$124.89	$127.39	$129.94	$132.53	$135.18
1.10	Support Staff	Hourly Rate	$80.81	$82.43	$84.07	$85.76	$87.47

f) The Rate Year, based on calendar years, commences on the anniversary of the date of award, which is the contract start date.

g) With respect to travel costs and travel-related expenses, the Consultant agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including employee lodging, transportation, per diem, and all miscellaneous costs and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County. Invoiced reimbursable expenses must be substantiated by copies of receipts and other documentation as necessary.

Article 9. METHOD AND TIMES OF PAYMENT

a) The Consultant agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Consultant, which are directly attributable or properly allocable to the Services, the Consultant may bill the County periodically, but not more than once per month, upon invoices certified by the Consultant pursuant to Appendix A – Scope of Work. All invoices shall be taken from the books of account kept by the Consultant, 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 Consultant. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Consultants under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a Subconsultant goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

b) In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Consultant 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 Consultant under this Contract. Such retained amount shall be applied to the amount owed by the Consultant to the County. The Consultant 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 Consultant for the applicable payment due herein.

c) Invoices and associated back-up documentation shall be submitted in duplicate by the Consultant to the County, as directed by the Project Manager.

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

e) Each invoice shall reference the specific milestone or the particular NTP which authorized the services performed and/or expenses incurred. The amount due on each invoice for authorized lump sum Work Orders will be determined by applying the percentage of the total work completed to-date to the authorized lump sum, subtracting any previous payments by the County. The amount due on each invoice for authorized pre-negotiated maximum amount Work Orders will be determined by applying the fixed category billing rate in Table 8.1 to the corresponding total number of hours for each classification for the work completed within the specified billing period.

The amount of the invoices submitted shall be comprised of the amounts due for all work performed and/or reimbursable expenses incurred in connection with the authorized work, less previous payments.

Article 10. CERTIFICATION OF WAGE RATES

In accordance with Florida Statute 287.055, the Consultant hereby certifies and warrants that wage rates and other factual unit costs, as submitted in support of the compensation are accurate, complete, and current as of the date of this Agreement.

Article 11. INDEMNIFICATION AND INSURANCE

The Consultant 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, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from any errors or omissions by the Consultant or its employees, agents, servants, partners principals or Subconsultants to the extent such errors or omissions are solely attributable to Consultant. The Consultant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions that result from such direct errors or omissions, 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 Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant 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 caused by Consultant.

Consultant shall not be liable for any claims hereunder in this Agreement, for any special, indirect, consequential or incidental losses or damages.

Consultant shall furnish to Miami-Dade County Risk Management Division 111 NW 1st Street Suite 2340 Miami FL 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

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

B. Commercial General Liability Insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate, not to exclude Products and Completed Operations. Miami-Dade County must be shown as an additional insured with respect to this coverage.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

D. Professional Liability Insurance in an amount not less than $1,000,000 per claim.

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

OR

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

The certificate holder must appear on the Certificate of Insurance as follows:

Miami-Dade County
111 N.W. 1st Street
Suite 2340
Miami, Florida 33128-1974

Compliance with the foregoing requirements shall not relieve the Consultant 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 of execution of this Agreement. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Consultant shall have an additional five (5) business days to submit a corrected certificate to the County. If the Consultant fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Consultant 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 Consultant shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Consultant shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Consultant shall be responsible for all direct and indirect costs associated with such termination.

Article 12. MANNER OF PERFORMANCE

a) The Consultant shall provide the Services described herein consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar location under the same circumstances and in a 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 Consultant in all aspects of the Services. Subject to Article 13 herein and based on a detailed, sufficiently evidenced and appropriate request of the County, subject to applicable law and professional standards, the Consultant shall promptly remove from the project any Consultant's employee, Subconsultant, or any other person performing Services hereunder. The Consultant agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Consultant.

b) The Consultant 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 reasonable 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 Consultant's personnel performing services hereunder at the behest of the County. Removal and replacement of any Consultant's personnel as used in this Article shall not require the termination and or demotion of such Consultant's personnel. Consultant shall not be liable for actions of the County or its employees, agents, Subconsultants or suppliers that are discriminatory, unlawful or that occur prior to any such removal or replacement of Consultant personnel.

c) The Consultant 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 Consultant 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 accordance with subsection (a) herein, 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 Consultant 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 Consultant 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 Consultant shall comply with all provisions of all published federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

g) Miami-Dade County may require the Consultant 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 CONSULTANT RELATIONSHIP

The Consultant is, and shall be, in the performance of all work services and activities under this Agreement, an independent Consultant, 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 Consultant's sole direction, supervision and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the County shall be that of an independent Consultant and not as employees and agents of the County.

The Consultant 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 Consultant 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 Consultant's agreement to perform the Work; questions as to the interpretation of the Scope of Work; and claims for damages, compensation and losses. All determinations by the County's Project Manager under this Article shall be reasonable and made in good faith in accordance with the Contract Documents and provided within the earliest practicable time.

b) Subject to the terms of this Agreement, including Appendix A, the Consultant 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 Consultant 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. The Project Manager shall provide all necessary explanations as to the meaning and intention of the Scope of Work within a reasonable time, approximated to equal ten (10) Days, after the Consultant's written inquiry to ensure timely completion of the Work. In case of an unreasonably delayed response by the County's Project Manager, any resulting delay of Work shall constitute an Excusable Delay in accordance with Article 20, if affected work is on the critical path

c) The Consultant must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Consultant and the Project Manager are unable to resolve their difference, the Consultant 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.

Article 15. COUNTY OBLIGATIONS

a) The Director of Traffic Services or his/her designee, herein referred to as the "Director", shall confer with the Consultant before any Notice to Proceed ("NTP") is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to this Agreement.

b) The Director may issue written authorization to proceed to the Consultant for each subsequent task authorization to be performed thereunder. As appropriate for a smooth and expeditious flow of work performed by the Consultant, multiple Work Orders may be open simultaneously at any time during the course of the contract. In case of emergency, the County reserves the right to issue oral authorization to the Consultant with the understanding that written authorization shall follow immediately thereafter.

c) The County will furnish to the Consultant any available plans, software source codes, reports, findings, and other data available in the County files pertaining to the work performed under this Agreement. Information shown on such plans or data shall be that which has been made available to the County, and shall be provided to the Consultant without the guarantee regarding its reliability and accuracy; the Consultant shall be responsible for independently verifying such information if it shall be used by the Consultant to accomplish the work undertaken pursuant to this Agreement.

d) The Director reserves the right to guarantee the accuracy of information provided by the County to the Consultant. When such guarantee is provided in writing, the Consultant shall not be compensated for independent verification of said information.

Article 16. SCHEDULE OF SERVICES

The County shall have the sole right to determine on which services the Consultant shall proceed and in what order. The Consultant shall provide guidance to the County prior to final determination of services to be provided. Written NTP issued by the Director shall cover in detail the scope, time for completion, and compensation for the system integrator services requested in connection with each unit of work. The Consultant warrants that it will have the right to offer all software licenses described herein.

Article 17. NOTICES

Any notices, reports, or other written communications from the Consultant shall be considered delivered when posted by certified mail or delivered in person to the Director. Any notices, reports or other communications from the County to the Consultant shall be considered delivered when posted by certified mail to the Consultant at the last address left on file with the County or delivered in person to said Consultant or the Consultant's authorized representative.

Article 18. DISPUTES

a) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, the final determination of the County. On a reasonable and best efforts basis, any such dispute shall be brought, if at all, before the County Mayor within 10 business days of the occurrence, event or act out of which the dispute arises. However, any and all delays caused as a result of Consultant pursuing the process required by the County and this Agreement, shall be assessed solely and completely against the County and its Project Manager. The County acknowledges that this timeline is guidance for timely and expeditious resolution of disputes and not as a definitive bar against the adequate resolution of any dispute.

b) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Consultant's

performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Consultant to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Consultant.

c) If the Dispute is not resolved by the foregoing process, within thirty (30) days of the date of the written notice to the Consultant referring to the determination of the County Mayor ("the Determination"), the Consultant may, by the giving of written notice, cause the matter to be referred to mediation. Mediation shall be held, to the extent possible, within thirty (30) days of the date of proper and mutually agreed upon determination of a duly licensed mediator, or such later date as may be mutually agreed upon. If the Dispute has not been settled within a period of two (2) calendar months after initiation of the mediation process, such Dispute, shall be finally settled under the Rules of Arbitration of the American Arbitration Association by one or more arbitrators appointed and agreed upon in accordance with said Rules. The arbitration shall be held, to the extent is in person, in Miami, FL. The arbitral award shall be final and binding upon the Parties. The Parties agree if the Dispute is of a technical nature then to be qualified, the selected mediator and arbitrator, must have, at a minimum, experience in professional consulting services.

Article 19. 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 Consultant, the County may, at its expense, elect to participate in the defense if the County should so choose and if such defense is properly noticed. Furthermore, the County may at its own expense defend or settle any such claims if the County can show that Consultant has failed to diligently defend such claims in a reasonable manner, and thereafter seek indemnity for costs from the Consultant in accordance with Article 29 herein.

Article 20. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Consultant shall maintain, and shall require that its Subconsultants and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Work. The Consultant and its Subconsultants 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 21. AUDITS

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

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Consultant 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 Consultant 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 22. SUBSTITUTION OF PERSONNEL

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

Article 23. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Consultant 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, and such consent shall not be unreasonably withheld. In the event that the County chooses to unreasonably withhold consent, Consultant shall have the right to terminate the Agreement upon thirty (30) days' notice to the County.

Article 24. SUBCONTRACTUAL RELATIONS

a) If the Consultant will cause any part of this Agreement to be performed by a Subconsultant, the provisions of this Contract will apply to such Subconsultant and its officers, agents and employees in all respects as if it and they were employees of the Consultant; and the Consultant 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 Subconsultant, its officers, agents, and employees, as if they were employees of the Consultant. The services performed by the Subconsultant will be subject to the provisions hereof as if performed directly by the Consultant.

b) The Consultant, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subconsultant, the portion of the Services which the Subconsultant is to do, the place of business of such Subconsultant, and such other information as the County may require. The County will have the right to require the Consultant not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Consultant will inform the Subconsultant 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 Subconsultant will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subconsultant satisfactory to the County, in addition to the other requirements herein provided, the Subconsultant 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 Subconsultant 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 Consultant's obligations under this Agreement. All Subconsultant are required to protect the confidentiality of the County's and County's proprietary and confidential information. Consultant shall furnish to the County copies of all subcontracts between Consultant and Subconsultant 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 Consultant in breach of this Contract, permitting the County to request completion by the Subconsultant of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subconsultant directly for the performance by such Subconsultant. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subconsultant hereunder as more

fully described herein.

Article 25. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Consultant understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Consultant 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 Consultant. The Consultant accepts all the risk associated with using this information and the County accepts the risk that Consultant's Scope of Work and associated costs may be revised should the County choose to revise the relevant assumptions, parameters, projections, estimates and explanations and the County accepts such commensurate risk.

Article 26. 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 27. WARRANTY

a) The Consultant warrants that the services and KITS software furnished to the County under this Agreement shall conform to the quality expected of and usually provided by the profession in the State of Florida applicable to the design, integrating and implementation of projects including roadway and bridge structures.

b) The Consultant warrants that no companies or persons, other than bona fide employees working solely for the Consultant or the County authorized Sub-consultants, have been retained or employed to solicit or secure this Agreement or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts, or any other considerations contingent upon or resulting from the award or making of this Agreement. The Consultant also warrants that no County personnel, whether full time or part-time employees, have or shall be retained or employed in any capacity, by the Consultant or the County approved sub-consultants, to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this warranty, the Director shall have the right to annul this Agreement without liability.

Article 28. FORCE MAJEURE

a) Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events do not include inclement weather (except as noted above) or the acts or omissions of Sub-consultants/subcontractors, third-party consultants/contractors, material-men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above. No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure lo carry out such obligations, but the obligation of the party or parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

b) It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, lo the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement, unless there exists

good cause for failure to give such notice, in, which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party or parties.

Article 29. 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 Consultant may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.

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 Consultant.

e) In the event that the County exercises its right to terminate this Agreement, the Consultant 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 Consultant 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 have 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 30. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Consultant to the extent such breach results solely and directly from Consultant's willful or negligent acts, failures or omissions without any involvement or contributory acts, failures or omissions from the County, OMF or any third party entity or event. Without limiting the generality of

the foregoing, examples of an Event of Default shall include the following:

i. the Consultant has not delivered Deliverables on a timely basis;

ii. the Consultant has refused or failed to supply enough properly skilled staff personnel;

iii. the Consultant has failed to make prompt payment to Subconsultants or suppliers for any Services;

iv. the Consultant has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Consultant's creditors, or the Consultant has taken advantage of any insolvency statute or debtor/creditor law or if the Consultant's affairs have been put in the hands of a receiver;

v. the Consultant has failed to obtain the approval of the County where required by this Agreement;

vi. the Consultant has failed to provide "adequate assurances" as required under subsection b below;

vii. the Consultant has failed in the material representation of any warranties stated herein.

b) If Consultant fails to perform the entirety of the Services or any portion thereof as specified by Attachment A, the County may request that the Consultant, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Consultant'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 Consultant for portions of the Services which the Consultant has not performed. In the event that the Consultant fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement; 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 provided to Consultant by the County.

Article 31. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the reasonable and evidenced determination of the County, the County may so notify the Consultant ("Default Notice"), specifying the basis for such default, and advising the Consultant 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 Consultant 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 Consultant 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 Consultant shall discontinue the Services upon the Termination Date.

Article 32. REMEDIES IN THE EVENT OF DEFAULT

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

a) 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

b) such other direct damages.

The Consultant shall also remain liable for liabilities and claims of the Consultant's Event of Default. If such Event of Default occurs, the County may also bring any suit or proceeding for specific performance or for an injunction.

Article 33. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall have the obligation to, at the County's option to (i) modify, or require that the applicable Subconsultant 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 Consultant's expense, the rights provided under this Agreement to use the item(s).

e) The Consultant shall be solely responsible for determining and informing the County whether a prospective supplier or Subconsultant 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 Consultant shall enter into agreements with all suppliers and Subconsultants at the Consultant'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 34. CONFIDENTIALITY

a) Any 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, or for which the County holds the proprietary rights, constitute Confidential Information of the County and may not, without the prior written consent of the County, be used by the Consultant or its employees, agents, Subconsultants 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 of the County and shall be subject to all the requirements stated herein. Neither the Consultant nor its employees, agents, Subconsultants 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.

b) All materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the Consultant in connection with Consultant Offerings or marked as Consultant Confidential, not including Deliverables, in the course of the performance of such Services, or the results of such Services, or for which the Consultant holds the proprietary rights, constitute Confidential Information of the Consultant and may not, without the prior written consent of the Consultant, be used by the County or its employees, agents, Subconsultants or

suppliers. In addition to the foregoing, all Consultant employee information and Consultant financial information shall be considered Confidential Information of the Consultant and shall be subject to all the requirements stated herein. Unless required by law, neither the County nor its employees, agents, Subconsultants 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 Consultant.

c) Additionally, each Party expressly agrees to be bound by and to defend, indemnify and hold harmless the other Party, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

d) Each Party shall advise its respective employees, agents, Subconsultants and suppliers who may be exposed to the other Party's Confidential Information of their obligation to keep such information confidential and shall promptly advise the disclosing Party in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or Subconsultant's or supplier's employees, present or former. In addition, the receiving Party agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the disclosing Party's Confidential Information.

e) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the harmed Party 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 Consultant shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Consultant or its employees, agents, Subconsultants or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Consultant shall accompany such materials.

Article 35. PROPRIETARY INFORMATION

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

b) The Consultant 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.

c) During the term of the contract, the Consultant 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 all Consultants 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. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

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

Article 36. PROPRIETARY RIGHTS

a) The Consultant 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 Consultant hereunder or furnished

by the Consultant to the County and/or created by the Consultant as Deliverables to the County, even if unfinished or in process, as a result of the Services the Consultant performs in connection with this Agreement, including all copyright and other proprietary rights therein. The Consultant shall not, without the prior written consent of the County, use such Deliverables on any other project in which the Consultant or its employees, agents, Subconsultants or suppliers are or may become engaged to the extent such Deliverables are customized and specific to the County.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Consultant and its Subconsultants specifically for the County, hereinafter referred to as "Developed Works", shall become the property of the County.

c) Accordingly, neither the Consultant nor its employees, agents, Subconsultants, 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 Consultant, or any employee, agent, Subconsultant or supplier thereof, without the prior written consent of the County, except as required for the Consultant's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Consultant and its Subconsultants 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 Consultant hereby grants, and shall require that its Subconsultants 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.

e) The KITS license applies to all software components, developed by Consultant or a Subconsultant, which comprise the KITS software:

1. <u>Use</u>
   This perpetual license allows the County to install the KITS application software on workstations for the operation and maintenance of ITS devices that are located with the County's jurisdiction and maintained by the County. This license will cover all KITS functionality installed. The County will not be required to pay additional license fees for future upgrades to KITS while under a maintenance contract.

2. <u>Distribution</u>
   The KITS software may not be used by or distributed to outside entities without the expressed written permission of the Consultant. The source code for the system will be placed in escrow. The source code will be released from escrow to the County in the event the owner of the source code or its designated representative is no longer able to provide support.

3. <u>Restrictions</u>
   The County may not provide any portion of the program to another person or entity without the expressed written permission of the Consultant. This applies to the KITS software in object form as well as the KITS software documentation.

4. Copyright
   All intellectual property rights in the KITS software and user documentation are owned by the Consultant and are protected by US copyright laws, other applicable copyright laws, and International treaty provisions. The Consultant retains all rights not expressly granted.

5. Limited Warranty
   Except as specifically provided herein, the Consultant makes no warranty, representation, promise or guarantee, expressed or implied, statutory or otherwise, with respect to the KITS software, user documentation or related technical support, including their quality, performance or fitness for a particular purpose. The Consultant will in no way be responsible for any ramification resulting from modification to the KITS software or hardware configuration by the County.

6. Clarification of Liability
   The Consultant is not responsible for operating system, third-party software, or hardware failures. It is the County's responsibility to make periodic backup copies of data for protection against a system failure. Notwithstanding any other provision in the Agreement, with respect to any use of KITS Consultant shall have no obligation to indemnify or defend the County, its officers, directors, and employees from and against any costs, losses, and damages that arise out of the negligence or willful misconduct of the County or of third parties for whom the Consultant is not responsible. Refer to Article 11 – Indemnification and Insurance.

7. Government Restricted Rights
   The KITS software and/or user documentation are provided with RESTRICTED AND LIMITED RIGHTS. Use, duplication, or disclosure by the County is subject to restrictions as set forth in FAR 52.227-14 (June 1987) Alternate III(g)(3) (June 1987), FAR 52.227-19 (June 1987), as applicable. Consultant is Kimley Horn and Associates, Inc., 355 Alhambra Circle, Suite 1400, Coral Gables, Florida 33134.

Article 37. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Consultant shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Consultant'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**
- **Payments to individual/Consultant for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**
- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

The Consultant confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the Code of Miami-Dade County)

2. ***Miami-Dade County Employment Disclosure Affidavit*** *(Section 2.8.1(d)(2) of the Code of Miami-Dade County)*

3. ***Miami-Dade County Employment Drug-free Workplace Certification***
   (Section 2-8.1.2(b) of the Code of Miami-Dade County)

4. ***Miami-Dade County Disability and Nondiscrimination Affidavit***
   (Section 2-8.1.5 of the Code of Miami-Dade County)

5. ***Miami-Dade County Debarment Disclosure Affidavit***
   (Section 10.38 of the Code of Miami-Dade County)

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   (*Section 2-8.1 of the Code of Miami-Dade County)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
   (Article I, Section 2-8.1(i) of the Code of Miami-Dade County)

8. ***Miami-Dade County Family Leave Affidavit***
   (Article V of Chapter 11 of the Code of Miami-Dade County)

9. ***Miami-Dade County Living Wage Affidavit***
   (Section 2-8.9 of the Code of Miami-Dade County)

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit*** *(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)*

11. ***Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit***
    (Section 448.095, of the Florida State Statutes)

12. ***Miami-Dade County Pay Parity Affidavit***
    (Resolution No. R-1072-17)

13. ***Miami-Dade County Suspected Workers' Compensation Fraud Affidavit***
    (Resolution No. R-919-18)

14. ***Office of the Inspector General***
    (Section 2-1076 of the Code of Miami-Dade County)

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

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

b) Conflict of Interest and Code of Ethics

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

Article 38. INSPECTOR GENERAL REVIEWS

a) Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order No. 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Consultant shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and

reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Consultant's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Consultant, its officers, agents, employees, Subconsultants, and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities, and performance of the Consultant in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Consultant or any third party.

b) Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter of one percent (0.25%) of the total Contract amount which cost shall be included in the total Contract amount. The audit cost will be deducted by the County from progress payments to the Consultant. The audit cost shall also be included in all change orders and all Contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) 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 Board; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) 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 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 IPSIGs to audit, investigate, monitor, oversee, inspect, and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Consultant, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Consultant from the Inspector General or IPSIG retained by the Inspector General, the Consultant shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Consultant's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful Subconsultants 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 39. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Consultant 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 Small Business Enterprises Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."

e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Consultants from County Work."

f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."

g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).

i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."

j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."

k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."

l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."

m) Any other laws prohibiting wage rate discrimination based on sex.

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

The Consultant 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 Consultant for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Consultant. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Consultant prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Consultant 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 Consultant, constitute a violation of any law or regulation to which Consultant is subject, including but not limited to laws and regulations requiring that Consultant conduct its operations in a safe and sound manner.

Article 40. NONDISCRIMINATION

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

b) By entering into this Contract, the Consultant 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 Consultant or any owner, subsidiary or other firm affiliated with or related to the Consultant 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 Consultant submits a false affidavit pursuant to this Resolution or the Consultant violates the Act or the Resolution during the term of this Contract, even if the Consultant was not in violation at the time it submitted its affidavit.

Article 41. CONFLICT OF INTEREST

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

   i) is interested on behalf of or through the Consultant directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Consultant or to the best of the Consultant's knowledge any Subconsultant or supplier to the Consultant.

c) Neither the Consultant nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Consultant shall have an interest which is in conflict with the Consultant's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Consultant provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those

provided by statute, the stricter standard shall apply.

e) In the event Consultant has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Consultant shall promptly bring such information to the attention of the County's Project Manager. Consultant shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Consultant receives from the Project Manager in regard to remedying the situation.

Article 42. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Consultant 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 Consultant 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 Consultant, 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 Consultant and its employees, agents, Subconsultants and suppliers will not represent, directly or indirectly, that any product or service provided by the Consultant or such parties has been approved or endorsed by the County.

Article 43. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Consultant has with the County, the Consultant 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 Consultant under federal bankruptcy law or any state insolvency law.

Article 44. 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 45. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

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

The Consultant 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. Consultant 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 Consultant must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Consultant participation in this joint purchase portion of the UAP, however, is voluntary. The Consultant 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 Consultant 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 Consultant 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 Consultant and shall be paid by the ordering entity less the 2% UAP.

c) Consultant Compliance

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

Article 46. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

Article 47. LIENS

The Consultant is prohibited from placing a lien on County property. This prohibition shall apply to all Subconsultants.

Article 48. FIRST SOURCE HIRING REFERRAL PROGRAM

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

Article 49. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

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

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128

Article 50. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Consultant becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Consultant effective January 1, 2021 and requiring all Subconsultants to provide an affidavit attesting that the Subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Consultant may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Consultant, the Consultant may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

Article 51. SURVIVAL

The parties acknowledge that obligations in this Agreement related to a warranty of Deliverables, if applicable, and resolution of claims outstanding during the term of the Agreement, will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Consultant 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.

Kimley-Horn and Associates, Inc.	Miami-Dade County
By:	By:
Name: John McWilliams	Name: Daniella Levine Cava
Title: Vice President	Title: Mayor
Date: July 27, 2021	Date:
Attest:	Attest:
Corporate Secretary/Notary Public	Clerk of the Board
Corporate Seal/Notary Seal	Approved as to form and legal sufficiency
	Assistant County Attorney

SHANDA SUTTON LAYNE
MY COMMISSION # GG 203858
EXPIRES: April 4, 2022
Bonded Thru Notary Public Underwriters

Appendix A –Scope of Work

APPENDIX A

L-10134

ADVANCED TRAFFIC MANAGEMENT MAINTENANCE AGREEMENT

SCOPE OF WORK

ISSUED BY MIAMI-DADE County:

The Department of Transportation and Public Works

SUMMARY

The Department of Transportation and Public Works ("DTPW") of Miami-Dade County ("the County") is retaining the services of Kimley-Horn and Associates, Inc. ("Consultant") to provide ongoing software integration and maintenance services as well as operational support for the existing Advanced Traffic Management System ("ATMS") central software ("KITS"). The Consultant shall also provide ongoing operational support for the existing third party ATMS central software ("CENTRACS"), as prescribed herein.

CONSULTANT SERVICES

1. Task 1 - KITS Software Integration and Maintenance Services

i. Software Support - The Consultant will provide on-going support, diagnostics, and maintenance of the existing KITS ATMS software. As part of this task, the Consultant may provide the following services:

a) KITS ATMS software issues diagnosis and resolution support
b) Database administration support
c) KITS ATMS software conceptual design and integration support
d) Minor Software Enhancements
e) ATMS servers upgrade support

The scope of this Work Order does not include repair, replacement, or procurement of hardware.

ii. KITS Software Enhancement Support - The Consultant will support customization of the existing KITS ATMS software functions and features as requested by County staff. The Consultant, at the direction of the County, will design, implement, test, build, configure, document, deploy, and provide training for the feature.

2. Task 2 - Operational Support Services

i. Onsite/Field Support - Consultant will provide technical, onsite, and/or field support to the County for the operation of controllers operating under KITS or CENTRACS software at the direction of the County. Support will generally consist of system monitoring, troubleshooting, field reviews, service requests, signal operating plan development/modifications, system modification/construction plan reviews, and operational enhancements including, but not limited, to Transit Signal Priority or Adaptive Traffic Control Systems.

ii. Systems Enhancement Support - Consultant will provide technical, onsite, and/or field support for planned and unplanned enhancements to the existing traffic signal system operating on the KITS or CENTRACS software system. Enhancements may include but not be limited to, upgrades to the existing school flasher beacon system, revisions/upgrades to existing technical or equipment specifications and standards, and the evaluation of new detection and communication technologies considered for implementation on the existing KITS or CENTRACS software system.