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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: July 1, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Agenda Item No. 8(F)(9)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award: Employee Fitness Center and Wellness Program Management Services

Resolution No. R-595-14

Recommendation

It is recommended that the Board of County Commissioners (Board) approve award of *RFP No. 873, Employee Fitness Center and Wellness Program Management Services* for the management and operation of the County's downtown Employee Fitness Center (Wellness Center). .

Scope

The Wellness Center is located in the lobby of the Stephen P. Clark Center, which is in District 5 and represented by Commissioner Bruno A. Barreiro. However, the impact of the Wellness Center is countywide as it is for the benefit of all County employees who wish to become members.

Fiscal Impact and Funding Source

The fiscal impact for the initial five-year term of this contract is $1,075,000. The contract is entirely funded by membership fees from approximately 1,000 members ($9 per pay period). The $1,075,000 is comprised of a $858,000 management fee paid to the operator over the five-year term and $217,000 for capital improvements to the Wellness Center, as necessary. If the one, five-year option to renew is exercised, the cumulative value of the contract will be $2,150,000. The current contract, *EPP-RFP645*, is for five years and six months and valued at $1,180,900.

The management fee of $858,000 covers the day to day operations and staffing of the Wellness Center by the operator, including the provision of instructor-led group activity classes. The remaining $217,000 will be used for maintenance, repairs, and replacement of existing fitness equipment, as well as repairs and maintenance to the facility itself, as needed. The County will also receive 20 percent of gross receipts generated by the operator for provision of individual member services and fitness products sold at the Wellness Center.

Department	Allocation	Funding Source	Contract Manager
Internal Services	$1,075,000	Employee Payments	Dennys Gonzalez
Total	**$1,075,000**		

Track Record/Monitor

The contract manager is listed in the table above. Maria Carballeira of the Internal Services Department is the Procurement Contracting Officer.

Delegated Authority

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

Vendor Recommended for Award

On October 28, 2013, a Request for Proposals (RFP) was issued under full and open competition. Two firms responded to the solicitation. The Evaluation/Selection Committee recommended the highest-ranked proposer for award based on the criteria established in the RFP.

Awardee	Address	Principal
Aquila Fitness Consulting Systems LTD, Inc.	1221 Brickell Avenue, Suite 1060 Miami, FL	I. Yvan Miklin

Vendor not Recommended for Award

Vendor	Reason
Complete Health and Fitness Concepts, Inc. d/b/a NFC Amenity Management	Evaluation Scores/Ranking

Due Diligence

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

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise Selection Factor does not apply.
- Local Preference was applied in accordance with the applicable ordinance but did not affect the outcome.
- The Living Wage Ordinance does not apply.

Background

Managerial responsibilities of the awarded vendor include hiring professionally certified instructional staff, conducting fitness consultations, organizing health and wellness promotions, developing and implementing physical activity programs, and delivering member recruitment and retention services. The awarded vendor will also serve as the County's facilitator and strategic partner in organizational wellness initiatives and in exploring expanding programming to benefit County employees at various locations. The programs offered shall be educational and tailored to encourage regular exercise and healthy eating habits. Services available to members include the supervised use of free weights, cardiovascular and strength equipment, and a diverse schedule of instructor-led, group activity classes such as spinning, yoga, core strength, and functional training.

Edward Marquez
Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 1, 2014

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

SUBJECT: Agenda Item No. 8(F)(9)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(9)
7-1-14

RESOLUTION NO. R-595-14

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT IN THE AGGREGATE AMOUNT OF $2,150,000 WITH AQUILA FITNESS CONSULTING SYSTEMS LTD, INC. TO OBTAIN EMPLOYEE FITNESS AND WELLNESS PROGRAM MANAGEMENT SERVICES, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN CONTRACT NO. RFP873

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the execution of an agreement in the aggregate amount of $2,150,000 with, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of July, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

Management Agreement No. RFP873
for
Employee Fitness Center and Wellness Program Management Services

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Aquila Fitness Consulting Systems LTD, Inc., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 1221 Brickell Avenue, Suite 1060, Miami, FL 33131 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the County owns the downtown Employee Fitness and Wellness Center ("the Center") located at the Stephen P. Clark Center, 111 N. W. 1st Street, Miami, FL 33128 for the enhancement of County employees' overall health through fitness and wellness programs, which is administered for the County by the Internal Services Department (ISD) or designee and,

WHEREAS, the Contractor as offered to provide such employee fitness and wellness program management services, on a non-exclusive basis, in a manner that conforms to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 873 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and

WHEREAS, the Contractor has submitted a written proposal dated November 20, 2013, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and

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

ARTICLE 1. DEFINITIONS

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

a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 873 and all associated addenda, and the Contractor's Proposal.

b) The words "Contract Date" to mean the commencement date on which this Agreement is effective and shall begin on the date indicated in the first page of this Agreement.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean Aquila Fitness Consulting Systems LTD, Inc. and its permitted successors and assigns.

e) The word "Days" to mean calendar days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "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 word "Member" to mean the subscriber who is deemed to have agreed to become a member of a County fitness center or authorized remote commercial fitness center through the Contractor's Discount Corporate Program, and whose name is entered in the County's/Contractor's register of members.

j) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.

k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

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

m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

n) The word "Work Order" to mean an assignment of work issued by the Internal Services Department to a Contractor to perform work specified in the Work Order.

o) The words "Work Plan" to mean a project plan outlining in specific detail how the work in the Work Order will be conducted.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions, the Scope of Services (Appendix A), Price and Payment Schedule (Appendix B) 3) any Work Order issued through this Contract, 4) the Miami-Dade County's RFP No. 873 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

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

ARTICLE 5. USE

The Contractor shall manage and operate the Center, at the rate and upon the covenants and conditions as set forth, in this Agreement. The Contractor shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of the County. Any sales by the Contractor of services or items not specifically authorized in writing by the County may constitute a default. Contractor shall conduct its business at all times in accordance with this Agreement. The Contractor shall use the facility within the Center identified in Appendix A, Scope of Service, only for the provision of fitness programs and wellness initiatives and accepts such facility in its "as-is" and "where-is" condition, at the execution of this Agreement.

ARTICLE 6. LIMITATIONS ON USE

Subject to Contractor's right to use the facility for the purposes specified in this Agreement, Contractor shall not suffer or permit the facility or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Center or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Center; (v) materially impair or interfere with the proper and economic cleaning, of the Center or the proper and economic functioning of any other common service facility or common utility of Center; (vi) impair or interfere with the physical convenience of any of the occupants of the Center; or (vii) impair any of the Contractor's other obligations under this Agreement.

ARTICLE 7. GOVERNMENTAL APPROVALS

If any governmental license or permit shall be required for the proper and lawful conduct of the Services, or any part thereof, the Contractor, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Contractor shall at all times comply with the terms and conditions of each license and permit.

ARTICLE 8. CONTRACT TERM

The Contract shall become effective on the date specified on the front page of this Agreement and shall continue through the last day of the 60th month. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of five (5) additional years. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

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

ARTICLE 9. NOTICE REQUIREMENTS

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

(1) to the County

a) to the Project Manager:

Miami-Dade County
Internal Services Department, Facilities & Utilities Management Division
111 N. W. 1st Street, 21st Floor
Attention: Division Director
Phone: (305) 375-3910
Fax: (305) 375-3914
E-mail: degonz@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Division

111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Assistant Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) **To the Contractor**

Aquila Fitness Consulting Systems LTD, Inc.
1221 Brickell Avenue, Suite 1060
Miami, FL 33131
Attention: I. Yvan Miklin, President & CEO
Phone: (800) 806-8482 ext. 85
Fax: (305) 397-1843
E-mail: yvanmiklin@aquilaltd.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 10. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

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

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

ARTICLE 11. ANNUAL MANAGEMENT FEE

The annual management fee shall be paid to the Contractor, by the County, for the Work and Services performed. The annual management fee shall remain firm and fixed for the initial term of the Contract (through July 31, 2019). During any option or extension period, the annual management fee will be determined pursuant to Appendix B - Price and Payment Schedule. However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 12. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County for the annual management fee (to include activity classes as described in Appendix B – Price and Payment Schedule), or any subsequent Work Order, once per month, upon invoices

certified by the Contractor pursuant to Appendix B – Price and Payment Schedule. The Contractor shall pay the County once per month the County's percentage of additional revenue derived from Gross Receipts. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

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

Miami-Dade County
Internal Services Department, Facilities and Utilities Management Division
200 N. W. 1st Street, Suite 201
Miami, FL 33128
Attention: Division Director

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

ARTICLE 13. SALES TAX

The Percentage of Monthly Gross Receipt payments to the County stipulated herein, are exempt from the State of Florida Sales and Use Tax in accordance with 212.031, Florida Statutes.

ARTICLE 14. LATE PAYMENT CHARGE

In the event that the Contractor fails to make any payments on time, as required to be paid under the provisions of this Agreement, a late payment charge at the rate of 1.5% per month or any portion of a month shall accrue from the due date, against the delinquent payment(s) until same are paid. The right of the County to require payment of such late

payment charge and the obligation of the Contractor to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.

ARTICLE 15. APPLICATION OF PAYMENTS

Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the monthly management fee payment made by the County to the Contractor. The remaining payment balance is then applied proportionately to the Percentage of Monthly Gross Receipts and the associated sales.

ARTICLE 16. WORTHLESS CHECK OR DRAFT

In the event that the Contractor delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Contractor shall incur and pay a service charge of $10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within not more than five (5) days from written notice of such default. Further, in such event, the County may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the County. Repeated occurrences of dishonored checks during the Agreement term will constitute a breach of contract and, at the County's option, will constitute a default allowing termination of this Agreement.

ARTICLE 17. ACCORD AND SATISFACTION

No payment by Contractor or receipt by County of a lesser amount than any payment of Percentage of Monthly Gross Receipts herein stipulated shall be deemed to be other than on account of the earliest stipulated Percentage of Monthly Gross Receipts then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Percentage of Monthly Gross Receipts be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Percentage of Monthly Gross Receipts or pursue any other remedy provided in this Agreement, at law or in equity. No covenant, term, or condition of this Agreement shall be deemed to have been waived by County, unless such waiver be in writing by the County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both the County and Contractor.

ARTICLE 18. MONTHLY GROSS RECEIPTS

a) Gross Receipts Defined: "Gross Receipts" means all monthly receipts collected by the Contractor from the sale of services or merchandise by Contractor, and subcontractor(s) of Contractor, sold in, upon or from the Center, including such sales as shall in good faith be credited by the Contractor and its subcontractors in the regular course of its or their business to personnel employed at the time of sale at the Center, including sub-contractor Agreements or independent contractor employee payments to the Contractor and mail and telephone orders received at the Center and off-premises sales. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of the Contractor, or its subcontractors,

whichever of such events shall first occur.

b) Contractor's Certification of Receipts: Contractor shall submit to County on or before the 10th day following the end of each month during the term of this Agreement and on or before the 10th day following the expiration or earlier termination of this Agreement, a written statement, signed by Contractor and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Contractor shall submit to County on or before the 60th day following the end of each Agreement year an Annual Written Statement, signed by Owner, CEO, or Financial Officer of the Contractor and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Agreement Year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

c) Examination of Contractor's Books and Records: Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross Receipts payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Contractor's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Contractor's business. All information obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except in connection with any mortgage or assignment of this Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

d) Contractor's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of the applicable Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Contractor. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement. Contractor shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Contractor shall keep, for at least three (3) years following the end of the applicable Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, Contractors, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Contractor's Gross Receipts.

e) Audit of Contractor's Business Affairs and Records: County shall have the right to cause, upon five (5) business days' written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the County or the County's Audit and Management Services Department or designated representatives from ISD. Contractor shall make all such records available for said examination at the Center or at some other mutually

agreeable location. If the result of such audit shall show that Contractor's statement of Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payment. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

f) If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, then Contractor may be deemed by the County to be in default of this Agreement.

ARTICLE 19. NEW CONSTRUCTION

The County's approval is required prior to all construction, all installation, and all use of facilities. All improvements shall become property of the County. All construction shall be accomplished in accordance with any applicable County or municipal permitting requirements.

ARTICLE 20. COUNTY APPROVAL

The Contractor agrees that it will obtain prior written approval from the County in all of the following matters:

A. Changes from Contractor's Proposal

B. Any modifications to the facility, the site, or signage outside of the facility

Should any of the above items be disapproved, Contractor may offer alternative solutions. The County reserves the right with stated just cause to require the Contractor to change within a stated time any and all items contained in this paragraph it deems in need of change, despite previous approval of same.

ARTICLE 21. SIGNS

The nature, size, shape, and installation of Contractor's business signs within the facility or in, on, or adjacent to the facility must first be approved in writing by the County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in Article 6 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Contractor at the termination of the Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Contractor.

ARTICLE 22. QUALITY OF CONTRACTOR'S SERVICE

The Contractor shall conduct its operations in an orderly manner and so as not to annoy, disturb, or be offensive to customers, patrons, or others in the immediate vicinity of such operations.

The Contractor shall control the conduct, demeanor, and appearance of its officers, members, employees, agents, representatives, and upon objection of the County concerning the conduct, demeanor or appearance of any such person, Contractor shall immediately take all necessary steps to correct the cause of such objection.

Contractor shall take good care of the facility, and shall use the same in a careful manner, and shall upon the expiration of this Agreement or its termination in any manner, deliver said facility to the County in the same condition as at the commencement this Agreement, ordinary wear and tear excepted.

It is expressly understood and agreed that the said operation shall not interfere in any manner with the use of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Contractor agrees that a determination by the County will be accepted as final in evaluating whether its activities infringe on the rights of others and that Contractor will fully comply with any decisions on this matter.

ARTICLE 23. UTILITY SERVICES

Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the facility as determined either by the public utility providing such service or by County in the exercise of reasonable judgment. Contractor shall make all repairs caused by Contractor's negligence.

ARTICLE 24. SERVICES/UTILITIES PROVIDED BY COUNTY

The County, at its sole cost shall be responsible for all services and utilities to the facility, including, but not limited to the following:

A. Electrical
B. Water facilities
C. Sewage collection
D. Waste collection
E. Interior/Exterior Building Maintenance (air conditioning, pest control, etc.)
F. Janitorial Services

ARTICLE 25. EQUIPMENT INSTALLED BY CONTRACTOR

The Contractor shall furnish and install all furnishings, fixtures, and equipment other than professional exercise equipment, necessary for the operation of the facility. All furnishings, fixtures, and equipment acquired for the facility shall be of good quality, and as good, or better than, that found at similar facilities.

Any equipment, furnishings, signage, and advertising installed by the Contractor shall be in

keeping with the appropriate standards of decor for the facility. Following the installation of any additional equipment, furnishing, and improvements which the County may approve from time to time, Contractor shall provide to the County a statement setting forth the cost of such equipment, furnishings, or improvements and the date upon which the installation of such equipment, furnishings, or improvements was completed.

Contractor agrees that all new equipment, furnishings, and improvements provided shall meet the requirements of all applicable building, fire, pollution, and other related codes.

Contractor shall not alter or modify any portion of the facility, or the improvements constructed therein without first obtaining written approval from the County.

ARTICLE 26. EMERGENCY/HURRICANE PREPAREDNESS

The Contractor shall prepare and provide for the County's approval an emergency evacuation and hurricane preparedness plan within thirty (30) days of Agreement date. Thereafter, Contractor shall provide the County with any and all updates to the plan.

ARTICLE 27. CURTAILMENT OR INTERRUPTION OF SERVICES

The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Contractor may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of the County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Contractor or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of payment or other charges, nor damages, shall be claimed by Contractor for reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Contractor's obligations hereunder be affected or reduced thereby.

ARTICLE 28. INDEMNIFICATION AND INSURANCE

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

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

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

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

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.

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

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

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

ARTICLE 29. NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved into the Center shall be at the risk of the Contractor. County shall not be liable to Contractor or any third party for any damage to said personal property unless caused by or due to negligence of County, County's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

ARTICLE 30. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 31. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the

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

ARTICLE 32. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 33. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

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

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

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall

be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 34. MUTUAL OBLIGATIONS

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

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

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

ARTICLE 35. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 36. AUDITS

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

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

ARTICLE 37. SUBSTITUTION OF PERSONNEL

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

ARTICLE 38. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 39. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

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

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed.

Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

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

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

ARTICLE 40. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

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

ARTICLE 41. 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 42. TERMINATION AND SUSPENSION OF WORK

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

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

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement or any subsequent Work Order, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the County exercises its right to terminate this Agreement or any subsequent Work Order, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;

v. take no action which will increase the amounts payable by the County under this Agreement; and

f) In the event that the County exercises its right to terminate this Agreement or any subsequent Work Order, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement or any applicable Work Order up to the Effective Termination Date; and

ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement or any applicable Work Order and has been specifically developed for the sole purpose of this Agreement or any applicable Work Order, but not incorporated in the Services.

g) All compensation pursuant to this Article are subject to audit.

ARTICLE 43. SURRENDER OF FACILITY

At the expiration or earlier termination of the term of this Agreement, Contractor shall peaceably surrender the facility in as good a condition as the facility was on the Agreement Date, ordinary wear and tear expected; all improvements made by the Contractor in connection with this Agreement shall become the property of the County. Contractor shall deliver all keys, as applicable, for the facility to the County and shall notify the County in writing of all combinations of locks, safes and vaults, if any, in the facility. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Contractor's property or trade fixtures into or out of the facility. Contractor's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this Agreement.

ARTICLE 44. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:

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

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

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

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

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

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

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

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:

i. treat such failure as a repudiation of this Agreement; and

ii. resort to any remedy for breach provided herein or at law, including but not

limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 45. TERMINATION BY COUNTY

The occurrence of any of the following may cause this Agreement to be terminated by the County upon the terms and conditions also set forth below:

a) Automatic Termination upon written notice by the County if any of the following occurs:

i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor.
ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days.
iii. Assignment by Contractor for the benefit of creditors.
iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.
v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement.
vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County.
vii. Failure to cease any activity which may cause limitation of County's use of the Center.
viii. A final determination in a court of law in favor of the County in litigation instituted
by the Contractor against the County or brought by the County against Contractor.

b) Termination after seven (7) calendar days written notice by the County either by posting on or at the Center and by certified or registered mail to any known address of Contractor set forth in this Agreement hereof for doing any of the following:

i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.

ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

c) Termination after fourteen (14) days from receipt by Contractor of written notice having either been posted on or at the Center or by certified or registered mail to the address of the Contractor set forth in this Agreement:

i. Non-performance of any covenant of this Agreement other than non-payment of any sum or sums due or performance fees and others listed in a and b above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

d) Revenue Control and Audit Defaults: The inability or failure of the Contractor to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Contractor. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments required in this Agreement.

e) Habitual Default: Notwithstanding the foregoing, in the event that the Contractor has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Contractor, regardless of whether the Contractor has cured each individual condition of breach or default as provided herein above, the Contractor may be determined by the Director of ISD to be an "habitual violator". At the time that such determination is made, ISD shall issue to the Contractor a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Contractor that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may terminate this Agreement upon the giving of written notice of termination to the Contractor, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Contractor shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Contractor shall discontinue its operations at the Center, and proceed to remove all its personal property in accordance with this Agreement.

In the event that the County terminates this Agreement by operation of any of the provisions as stated in this Agreement, then in addition to other rights and remedies available to the County under the law, the County may accelerate the payment under this Agreement, whereupon the entire balance owed by the Contractor under this Agreement shall become immediately due and payable without further notice or demand.

ARTICLE 46. LIMITING LEGISLATIVE OR JUDICIAL ACTION

In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Center for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Center for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the

County deems the Agreement null and void by function of this Paragraph, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability under this Agreement.

ARTICLE 47. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 48. REMEDIES IN THE EVENT OF DEFAULT

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

a) lost revenues;

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

c) such other direct damages.

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

ARTICLE 49. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.

b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected

with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 50. CONFIDENTIALITY

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

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief

to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 51. PROPRIETARY INFORMATION

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

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

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

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

ARTICLE 52. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged.

Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

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

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 53. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

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

1. ***Miami-Dade County Ownership Disclosure Affidavit*** (Section 2-8.1 of the County Code)
2. ***Miami-Dade County Employment Disclosure Affidavit*** *(Section 2.8-1(d)(2) of the County Code)*
3. ***Miami-Dade Employment Drug-free Workplace Certification*** *(Section 2-8.1.2(b) of the County Code)*
4. ***Miami-Dade Disability and Nondiscrimination Affidavit*** *(Section 2-8.1.5* of the County Code)

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

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

7. ***Miami-Dade County Code of Business Ethics Affidavit***
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

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

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

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
(Article 8, Section 11A-60 11A-67 of the County Code)

11. ***Subcontracting Practices***
(Ordinance 97-35)

12. ***Subcontractor /Supplier Listing***
(Section 2-8.8 of the County Code)

13. ***Environmentally Acceptable Packaging***
(Resolution R-738-92)

14. ***W-9 and 8109 Forms***
(as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
   - Identification of individual account records
   - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
   - Tax reporting purposes
   - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
(Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

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

b) Conflict of Interest
Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 54. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent

right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

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

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

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

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

ARTICLE 55. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

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

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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

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

ARTICLE 56. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any

employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 57. CONFLICT OF INTEREST

The Contractor represents that:

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

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

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

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

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

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

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above

and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 58. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 59. BANKRUPTCY

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

ARTICLE 60. 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 61. 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 Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were

rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of $1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at https://iapps.southfloridaworkforce.com/firstsource/.

ARTICLE 62. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

The Contractor shall comply with the state of FL Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency 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) ensure 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) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Contractor does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the contract.

ARTICLE 63. INSPECTION AND MONITORING BY COUNTY

The County shall have the right, without limitation, to make periodic reasonable inspections of all operations during the normal operating hours and to monitor and test the quality of services of the Contractor, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means. Such periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of this Agreement.

ARTICLE 64. DAMAGE OR DESTRUCTION OF PREMISES

In all events, Contractor shall repair all damages to the Center caused by the Contractor, its employees, agents, subcontractors at its own cost and expense.

In the event the Center is destroyed or damaged such that services cannot be provided, through no fault of the Contractor, its employee, agents, contractors or subcontractors, the Contractor and the County shall be under no obligation to repair and reconstruct the premises. An adjustment of the Minimum Annual Guarantee payable hereunder shall be proportionately made up to the time of such damage or destruction. The portion of the Agreement which pertains to such destroyed property shall cease and terminate. All adjustments which are proper including restoration of the facility to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the Concession, the Contractor may reconstruct the premises at its own cost.

ARTICLE 65. DIMINUTION FOR COUNTY'S REPAIR

Except as elsewhere specifically provided in this Agreement, there shall be no allowance to Contractor for a diminution of payment and no liability on the part of the County by reason of inconvenience, annoyance or interference with Contractor's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Center or the building or buildings contained within the Center, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Contractor's use of the Center.

ARTICLE 66. INGRESS AND EGRESS

Subject to County rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Center, Contractor, it's agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.

ARTICLE 67. ASSIGNMENT, SUB-CONTRACTING AND SUCCESSORS IN INTEREST

A. Contractor shall not assign, mortgage, pledge nor otherwise encumber this Agreement, nor any portion thereof, nor any property associated with this Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.

B. Contractor shall not enter into any sub-agreement for services required to be provided under this Agreement without prior written approval of the County. Unapproved sub-contracting shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on any subcontractors, including percentage payments on gross receipts as defined in this Agreement. Contractor shall be liable for acts and omissions by any subcontractor affecting this Agreement. The County reserves the right to directly terminate (and pursue any applicable remedy) any subcontractor of the Contractor for any cause for which Contractor may be terminated.

Any sub-agreement for Services must be made available and accounted for through the Contractor so as to provide seamless service to the public as if provided directly by the Contractor.

ARTICLE 68. OWNERSHIP OF CONTRACTOR

The ownership of the Contractor is very important to the County. Therefore, the County reserves the right to terminate this Agreement at any time if more than l0% of the ownership of the Contractor has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in the best interests of the public. Contractor agrees to provide on 24-hour notice to the County an accurate list of all owners of the Contractor, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Contractors, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

ARTICLE 69. RIGHTS RESERVED TO COUNTY

All rights not specifically granted to the Contractor by this Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.

ARTICLE 70. SURVIVAL

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

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

Contractor	Miami-Dade County
By: _____	By: _____
Name: IYVAN MIKLIN	Name: Carlos A. Gimenez
Title: PRESIDENT & CEO	Title: Mayor
Date: 03/17/2014	Date: _____
Attest: _____ Corporate Secretary/Notary Public	Attest: _____ Clerk of the Board
Corporate Seal/Notary Seal	Approved as to form and legal sufficiency
	_____ Assistant County Attorney

WILLMOR A. FONSECA
Notary Public - State of Florida
My Comm. Expires Aug 7, 2017
Commission # FF 043297
Bonded Through National Notary Assn.

APPENDIX A
SCOPE OF SERVICES
Employee Fitness Center & Wellness Management Program Services

1. Background

The County's Employee Fitness and Wellness Center ("the Center"), located in downtown Miami was established in 2006 as a benefit for its employees. The 5,347 square foot facility is located on the ground floor of the Stephen P. Clark Center at 111 N. W. 1st Street, Miami, FL 33128 ("Government Center"), adjacent to other County-owned/operated buildings within the government district. Membership averages around 1,000 and is limited to County and downtown Court employees. The average level of Membership is 1,000.

The Center provides ample workout space and basic fitness center services which include the use of free weights, cardiovascular and strength equipment, daily program activities, supervision in the use of equipment and personalized training. Convenient and secure locker rooms with shower facilities are available on-site. A complement of professional fitness staff facilitate, manage and monitor the operations of the Center. A Closed Captioned Television *(CCTV)* system assists with the Center's commitment to member safety. Dedicated classes in spinning, yoga, core strength, functional training and boot camp stimulate programmed fitness services.

2. Objective

The Contractor's objective is to enhance the overall health and wellness of County employees with a variety of fitness programs that inspire life changing experiences. Programming shall be educational and dedicated to empowering Members in the area of health and fitness by encouraging regular exercise, healthy eating habits and sufficient rest and relaxation. The existing flagship downtown Center, and any future facilities, shall be operated and managed in a safe, clean and welcoming manner, consistent with comparable fitness and wellness centers in the local marketplace, and serve as the model and catalyst to future expansion initiatives.

3. Qualifications

A. Minimum Qualifications

Contractor's staff that will provide fitness, health and wellness services shall be certified by a National Commission for Certifying Agencies (NCCA) accredited organization **and** hold an active Cardiopulmonary Resuscitation Certificate (CPR).

Contractor shall maintain these qualifications during the term of the agreement, including renewals and extensions, thereof.

B. Preferred Qualification

The Contractor warrants that it meets, and will continue to maintain to the County's satisfaction, a minimum of three (3) years of experience in managing the operations of a corporate fitness and wellness program for governmental groups of 5,000 employees or more.

4. Required Management and Operational Responsibilities

The Contractor shall manage and operate the Center, providing for all resources and requirements necessary in the performance of the Services listed herein, as follows:

A. Staffing

1. Provide fully qualified and experienced staff members that will adhere to the highest professional standards of conduct when interacting with Members. Staff members shall be present and available at all times during the Center's hours of operations, and accessible to the County via telephone at reasonable times. The Contractor's staff shall be delegated sufficient authority to ensure the competent performance and fulfillment of the Center operations. Staff shall not engage in any outside business activities while on County property nor attempt to solicit business from Members while on County property or away from County property.

2. Assure adequate supervision and number of staff members on-site to be actively engaged in consulting and advising Members on the proper use of fitness equipment and the benefits of physical fitness during the Center's hours of operation. Contractor shall arrange staff members' schedule to achieve quality fitness education, health, safety and wellbeing standards, while maximizing available resources.

3. Provide readily available certified personal trainers to Members as a value added service. Personal trainers shall be wholly compensated by the Member engaging their services and may develop individual exercise programs and fitness objectives to meet the Members' health goals. Only Members in good standing may use personal trainers on County facilities. Professional trainer services shall also be made available to the County, should departmental group wellness initiatives be considered, on an as needed basis. Fee schedule for personal trainer services shall be clearly displayed within a easily visible area for all Members to view. Any changes to fee schedule shall require approval from the County.

4. Ensure that staff members wear distinctive uniforms *(e.g., collared knit shirts with firm's color, name/logo, and gym pants/shorts)* while performing the services required herein and the during Center's hours of operation. The intent of requiring uniforms is for the ease of distinguishing the Center's professional staff.

5. Ensure that Contractor's professional fitness staff members pass a standard fitness test *(e.g., endurance, strength, agility, and flexibility)*, on an annual basis, in order to participate in all Center activities related to the various fitness and wellness programs. All professional fitness staff members shall be proficient in fitness evaluations and safe exercise practices.

6. Notify the County of changes in Center staffing, in advance, whenever possible. When non-planned changes occur, the Contractor shall notify the County within twenty-four (24) hours of the staffing change, in conjunction with a plan and timeline for the seamless replacement and transition of the employee(s).

B. Operations of Worksite Fitness Center and Wellness Program Initiatives

1. Secure and comply with any and all permits/licenses necessary for the operation of the Center, as may be required by any and all government entities, agencies and/or authorities having lawful jurisdiction which may be applicable to the Contractor's operation of the Center

as a fitness facility and health studio (i.e., registration with the state's division of corporations, local business tax receipt and resale certificate for sales tax on retail products, etc.). This includes any registrations required by the Contractor's employees or independent contractors providing services. The Contractor shall post any bond which may be required under applicable law. Damages, penalties and or fines imposed on the County or the Contractor for failure to obtain required licenses and permits shall be borne by the Contractor.

2. Operate the Center five (5) days a week, Monday through Friday, continuously at a minimum, from 6:00 a.m. to 8:00 p.m., except for County, State and Federal holidays. Any changes to the hours of operations shall require the County's written authorization, prior to implementation.

3. Require every Member, prospective Member and/or guest to complete: 1) a Liability Waiver Form, and, (2) a Physical Activity and Readiness Questionnaire (PAR-Q), **prior** to obtaining membership, utilizing any of the physical exercise equipment, and participating in any aerobic fitness activities and/or fitness evaluation testing services offered at the Center. Under no circumstances shall an individual be permitted to use Center facilities without executing the Liability Waiver Form. Additionally, Contractor's professional Center staff shall review each PAR-Q completed by an interested participant, and if warranted by the responses: 1) limit an individual's use of Center facilities, and/or 2) require written permission or guidance from a physician/primary health care provider **prior** to granting such utilization privileges to the individual.

4. Institute procedural guidelines for the resolution of all complaints filed in connection with personal injury, property damage, accidents, thefts, unbecoming conduct of staff members and any other matters relating to Center operations. The Contractor shall conduct a full, transparent, and factual investigation concerning the allegations of the complaint and, where possible, facilitate the reasonable resolution of the matter that is satisfactory to all parties involved. The Contractor shall document and maintain sufficient records of all such matters. These records shall be available to the County for inspection, at any time. Contractor shall also review pending complaints with the County's Project Manager/Wellness Coordinator at each monthly meeting, as established in below Letter C, Item No. 7.

5. Establish and preserve a sanitary environment and sound operating conditions within the Center. Contractor shall not allow vermin or other pests to exist and fester in the facility. The Contractor shall abide by the County's Integrated Pest Management guidelines for pest control, to be provided by the County. The cost of pest management services for the Center shall be borne by the County. Any losses or damages to the Center resulting from negligence, intentional or unintentional acts of the Contractor or its employees shall be the sole responsibly of the Contractor. In such cases, the County reserves the right to make any necessary repairs to the facilities and pass the expenses of such repairs on to the Contractor. The County, at its sole discretion, may allow the Contractor to make the repairs with County approval.

6. Monitor the performance of janitorial personnel assigned to clean the Center through the County's facilities management services. Contractor shall be proactive in addressing any issues related to the upkeep of the facility through open communications with the County's Building Management Office. The cost of janitorial services and supplies for the Center shall be borne by the County.

7. Place all trash in airtight containers and depositories within centrally located and easily accessible areas, as designated by the County. Contractor shall make every effort to minimize odors emanating from trash bins and follow all directives provided by the County concerning trash removal.

8. Maintain the existing professional quality fitness equipment (aerobic and strengthening) in a consistent and effective manner, where maintenance shall be performed regularly and in accordance with manufacturer's recommendation. All gauges and indicators shall be calibrated and use of such equipment shall be available at all times during the Center's hours of operations. General cleaning of the equipment shall be performed every evening prior to closing of the Center, or as deemed necessary by the Contractor's staff. An equipment maintenance log shall be kept by the Contractor and shall be provided to the County's Project Manager at the monthly meetings and upon request. Upon commencing the operational management services of the Center, the Contractor shall conduct an assessment of all existing equipment to determine its condition. The Contractor may propose an equipment replacement and upgrade plan to the County's Project Manager for review and consideration, if warranted. Thereafter, the Contractor shall prepare an annual equipment inventory and assessment report, which estimates the usable lifecycle of each piece of equipment and replacement plan recommendations to the County.

9. Conduct an inspection of the entire Center on a quarterly basis. Contractor shall also actively monitor exterior and interior surfaces of the facility for the presence of mold, including but not limited to, observed instances of water damage, condensation, seepage, leaks, or any other water penetration (from internal or external sources). Contractor shall be attentive and screen for any complaints of respiratory ailments or eye irritation by employees and Members of the Center. Any adverse and unsafe conditions, to include mold presence, shall be immediately reported to the County's Project Manager in writing. The Contractor shall also notify the County immediately, if any governmental agency communications addressing complaints on the facility's indoor air quality are received.

10. Provide the sanitizing and hygiene consumable products necessary in the operations of the Center. Sanitizers shall be used for the purpose of cleaning exercise equipment. Hygiene products such as body wash, shampoo, conditioner, hand wash products, etc. shall be maintained in sufficient supply for use in the Member locker rooms and shower stalls. The procurement and stocking of these supplies shall be the sole administrative and financial responsibility of the Contractor.

11. Procure snacks, beverages, fitness/wellness products and additional fitness services to be offered and sold at the Center by the Contractor. Fitness products (gym/fitness-related gear – i.e., gloves, t-shirts, etc.), snacks and beverages (power bars, shakes, etc.), and additional services (personal training, massage therapy and other individualized wellness services), shall be presented in a fully-accessible manner for the benefit of all Members. The Contractor shall only offer a State of Florida licensed massage therapists as a value added service to Members and the County.

12. Provide music entertainment throughout the operational hours of the Center, via satellite radio subscription or similar service. The equipment required to broadcast satellite radio service may be provided by the County.

13. Provide for all office equipment and consumables that the Contractor determines as necessary and required in the management and operation of the Center (e.g., paper and toner for

personal computer and printer, general office supplies, etc.). Contractor is also responsible for providing bottled/filtered drinking water within the Center, at no charge, to the Members. Currently, there is a water fountain located at the Center which is maintained by the County's building/maintenance system.

14. Make no alterations or additions to the Center without the prior written consent of the County's Project Manager/Wellness Coordinator.

C. Therapeutic and Wellness Initiatives and Member Recruitment/Retention Services

1. Implement a comprehensive fitness activities program to include the delivery of group fitness classes at the Center's Activities Room. The Contractor shall develop and provide a minimum of three (3) instructor led fitness group classes per day or fifteen (15) per week, in accordance with below schedule. The County and the Contractor will work collectively to select the initial format of fitness classes and frequency to be offered, which may differ from below schedule. However, class format and times are subject to change resulting from mass Member surveying, and with prior approval from the County. Instructor led fitness group classes outside of those included in the annual management fee, shall be billed in accordance with Appendix B – Price and Payment Schedule. The Contractor shall also offer virtual fitness classes incorporated throughout the Center's hours of operations at no cost to the County or its Members.

	Monday - Friday	
Morning:	one class	7:00 am to 8:00 am
Mid-day:	one class	Noon – 12:45 pm **or** 1:00 pm to 1:45 pm
Evening:	one class	5:15 pm – 6:15 pm

Note: Contractor shall assume there are approximately 245 days of programmed activities per year, based upon a calculation of 5 days x 52 weeks, less 13 County holidays, with occasional early closure of the Government Center building relating to natural emergencies, special events, etc.

2. Ensure programmed activities meet the needs and interests of Members and also attract the participation of prospective Members/employees. The Contractor shall ensure that activities are inclusive of open house events, facility tours, new Member orientation and equipment overview, basic fitness consultations (i.e., Blood Pressure, Resting Heart Rate, Body Mass Index, Weight and Flexibility), educational seminars and workshops, and seasonal competitions and certificates of achievements. The implementation of any program shall include, at the Contractor's expense, a strategy and tracking mechanism to accurately measure member attendance and participation for each activity, along with the capability to generate measurable data reports. The data will be utilized as support to quantify the Center's performance goals and outcomes.

3. Provide discount membership offerings at authorized remote commercial fitness centers to County employees. County employees will be fully educated by the Contractor on discounted rates available through the Contractor's Corporate Discount Program. Employees will work directly with the Contractor on securing discounted rates at participating commercial fitness centers.

4. Provide "My e-Aquila" subscription and licensing to all County fitness center Members, regardless of location, in addition to all County employees participating in the Contractor's

Corporate Discount Program at an authorized remote commercial fitness center, at no additional charge to Members or the County. "My e-Aquila" is an interactive on-line solution that educates Members on health, behavioral, disease management, self-care, and life and work style assessments. "My e-Aquila" also offers an online multi-media center with a library of streaming audio and video health and wellness products, as well as virtual workouts. There is no limit to the number of Members that can access this online solution as long as they are an active subscriber to a County fitness center or an authorized commercial fitness center through the Contractor's Discount Corporate Program.

5. Prepare and distribute member surveys annually both electronically and in hardcopy form. The Contractor should also have the ability to capture non-survey suggestions and recommendations from all County employees. Feedback shall be compiled and analyzed by the Contractor for presentation to the County's Project Manager/Wellness Coordinator. Analysis will be used for the purpose of planning strategic implementation initiatives that promote, market, and ultimately attract employees to become new Members and participate in Center services, while actively retaining and engaging existing ones.

6. Provide content for the County's weekly employee newsletter with the purpose of encouraging employee participation in fitness and wellness services, educating readers on health-related topics and showcasing upcoming events, competitions and program activities.

7. Participate in monthly meetings with the County's Project Manager/Wellness Coordinator to discuss the schedule of activities, services, utilization, and wellness initiatives, etc. Contractor shall be prepared to offer suggestions, solutions and ideas on fitness and wellness related matters to the County.

8. Market, coordinate, and participate in various fitness and wellness related special events and community activities that the County may choose to participate in to raise physical fitness awareness (e.g., Mercedes Benz Corporate Run, County's Health Fairs, etc.).

9. Develop innovative ideas (e.g., streaming onsite fitness classes to alternate locations via the County's website portal, if capability exists, offering wellness and fitness courses on a rotating basis at alternate County locations, etc.) that will engage County employees at remote locations to participate in some form in the County's fitness and wellness initiatives.

10. Create and distribute outreach materials that advocate for the Center's fitness and wellness services and resulting health benefits available to employees who participate. The Contractor shall be solely responsible for the production and graphic design necessary in the assembly of all marketing materials (e.g., flyers, newsletters, brochures, special event banners, etc.) that are necessary for promotions. The County's Project Manager/Wellness Coordinator shall provide approval prior to the dissemination of information and materials to County employees.

11. Partner with the County to design, create and update the Center's web presence (Website) and social networking initiatives hosted on the County's intranet currently located at http://www.miamidade.gov/wellness. The Contractor shall also provide the County with wellness-related appropriate content for inclusion in either the Center's website or any other website that the County may designate as a wellness initiative available to County employees and/or the Miami-Dade Community.

12. Promote and/or cross-market related fitness and wellness services and/or goods (e.g., physician's office, food service, pharmacy, etc.) for the mutual benefit of the County and its affiliates.

D. Program Monitoring, Quality Control and Data Management

1. Provide organizational structure, managerial support and commitment to leadership which facilitates the operations of the Center and the evolution of the County's organizational wellness initiatives. The County shall have the right, without limitation, to monitor and test the quality of services provided by the Contractor, including, but not limited to, review of personnel administration, customer service functions, acquisition and contracting processes, and the effectiveness of cash-handling procedures, through the use of secret shopping, closed circuit TV review, and other reasonable means.

2. Manage all membership functions including, but not limited to, initial registration, electronic database management, member access card issuance and control, tracking and/or collections of fees, including Membership fees collected via payroll deduction and other forms of payment collection, remote discount commercial fitness center participation and issuance of guest passes as follows:

    a. Acquire, install, and administer a full-service fitness center management software system necessary to operate the Center and track wellness initiatives and outcomes. Contractor shall include the installation of a digital subscriber line (DSL), or similar service, in order to provide fast internet connectivity should the Contractor's system be incompatible with the County's established protocols and firewalls.

    b. Manage and track Membership database to include member check-in and attendance tracking, programmed fitness class participation, activities participation, and personalized training and wellness related service requests. Contractor shall provide for online, web-based registration capabilities to facilitate member participation and tracking options. Members should easily be able to schedule fitness and wellness related services online such as massage therapy, personal training, etc. Gathered information shall be used for the purpose of generating statistical reports that may support the need for enhanced fitness and wellness initiatives. Contractor shall provide ad-hoc reports to the County, as deemed necessary by the County, upon request.

    c. Review Membership reports on a consistent basis to monitor Membership base, analyze trends and formulate necessary adjustments to Membership policies, activities programming, and outreach opportunities, etc. The Contractor shall consult with the County's Project Manager/Wellness Coordinator when initiating the collection, consolidation and storage of data. Contractor's management system shall be secure to preserve accuracy, consistency and confidentiality of member information, which may include medical information that resides with Contractor.

    d. Provide for flexible payment options, and implement the necessary controls for short-term Members who elect to pay Membership fees and/or other services via credit card or personal check instead of payroll-deduction. These flex-pay options shall also be available through an online service (e.g. web based payment site).

e. Interface with, and manage the access of, the control system installed by the County for the purpose of regulating Center entry and access.

f. Conduct quarterly reconciliation of Members' listing to address any discrepancies between the Contractor's Membership management software and the County's payroll system.

g. Install a Point of Sale (POS) System that shall allow for the charging of fitness and wellness related services, in addition to Membership fees. The software required to manage sales and Membership payments shall be the sole responsibility of the Contractor. The hardware computer equipment necessary for usage in these functions will be provided and maintained by the County. The POS System shall be used as a tool by the Contractor to determine percentage of total gross receipts for sales in accordance with Appendix B – Price and Payment Schedule.

5. Additional Services and Related Expansion of Fitness and Wellness Program Services

At the County's sole discretion, the Contractor may be tasked with exploring new opportunities for expanding services and/or activities at other County facilities, in addition to the downtown facility described herein. Should the County and/or Contractor identify a viable remote location(s) where wellness services, related fitness activities, and/or value-added packages may be offered to County employees located outside of the downtown area, the Contractor may be tasked with: 1) developing, scheduling and conducting remote and/or rotational fitness and wellness program activities, 2) leading a feasibility study and market research sourcing for the purpose of determining alternative solutions to meet ongoing fitness and wellness employee needs, and 3) recommending strategic ideas for implementing and designing additional workplace wellness areas, including the formulation of wellness packages that may be offered to alternate site employees at lower membership rates. The scope for such expansion services shall be provided by the County through a Work Order Assignment as noted below. Approved projects may require negotiation on a case by case basis.

6. Work Order Assignments

The Contractor shall provide Additional Services and Related Expansion Services through Work Orders issued by the County which will define the scope of services, deliverables, pricing, payment terms, etc. for each particular project. All Additional Services to be performed under this Agreement requires a Work Order issued by the County. Multiple Work Orders may be issued simultaneously, depending upon the need for the services. The County reserves the right to develop an alternative, streamlined process for work assignments. The County, at its sole discretion, may modify, suspend, or cancel a Work Order at any time and shall only pay for work actually performed by the Contractor.

After an assignment has been identified, the County may request a written work plan from the Contractor. The work plan must be submitted to the County as defined in each request, and should include at a minimum the following:

- Contractor's understanding of the project;
- Description of the proposed approach and deliverables;
- Project schedule and completion date;
- Staff performing the work, including job title, and estimated number of hours each will spend on the project;
- Breakdown of the cost, including hourly rates per staff member, as may be applicable; and,

- Total not-to-exceed cost for the assignment.

All costs associated with estimating a project shall be borne by the Contractor; and the Contractor shall not have any claim, financial or otherwise, against the County as a result of the County's modifying or canceling a project.

7. County Responsibilities

The County will:

1. Purchase all professional exercise equipment and related fitness materials necessary to operate the facility, after consultations with the Contractor, as necessary, at the County's sole discretion. The County may consider alternative acquisition options. The County may also fund capital improvements projects necessary to update and/or repair the existing facility, as agreed to between the Contractor and the County, at the County's sole discretion. Each fiscal year, the County's Project Manager/Wellness Coordinator and the Contractor shall prepare a mutually agreed upon budget for the purpose of effectuating purchases and capital improvement projects deemed necessary, at the County's sole discretion, for the operations of the Center.

2. Reimburse Contractor for the costs of servicing the exercise equipment performed by outside contractors, in accordance with manufacturer's recommendation, and upon submission of invoice with complete supporting documentation by the Contractor.

3. Provide water, sewer and electricity utility services to the Center. The County will also provide pest management services and allow Contractor to have general access to the security services provided at the Stephen P. Clark Center. Security guard services will not be stationed at the Fitness Center.

4. Provide structural rehabilitation services to the Center, on an as needed basis, at the County's sole discretion, to include common areas, lobbies, restrooms, and building systems serving the Center (except to the extent that the need for repair is caused by the act or omission of Contractor or its employees).

5. Provide for janitorial services and supplies to the Center through an independent janitorial contractor.

Appendix B
Price and Payment Schedule

A. PRICE

The County shall pay the Contractor a total Annual Management Fee of **$171,545** for the provision of all Services required in the management of the Employee Fitness Center and Wellness Program, as stated in Appendix A - Scope of Services. The County will pay the Contractor the annual management fee in equal monthly installments. Contractor may submit monthly invoices, to the County, ten (10) days prior to the beginning of each month within agreement period.

Additional instructor led fitness group classes pursuant to Appendix A – Scope of Services, Section 4, Letter C, Item No. 1 will be reimbursed to the Contractor based on the "per class hourly rate" listed below, or as approved by the County.

***$45.00 Per Class Hourly Rate (1-99 units)**
***$42.50 Per Class Hourly Rate (100-99,999 units)**
*class units increment on a cumulative value throughout the term of the contract and any option or extension period thereof

AND

B. PERCENTAGE OF TOTAL MONTHLY GROSS RECEIPTS

The Contractor shall pay to the County an amount equal to **twenty** percent **(20%)** of total monthly gross receipts within 10 days following the end of each month during the term of this Agreement to the extent that additional revenue (other than member fees) is derived from the operations of the Center and/or organizational wellness initiatives.

"Total Monthly Gross Receipts" signifies all revenues and receipts resulting from all Center sales transactions and/or organizational wellness initiatives including, without limitation, sale of goods, snacks and beverages, merchandise, personal training and special activities fees, massage therapy sessions, clinical service charges, guest fees (if any), and specific individualized fitness evaluation and departmental special requests group services and initiatives. Total Monthly Gross Receipts shall not include the following: (i) sales, excises, and other taxes now or hereafter imposed upon the sale or value of goods or services, (ii) the amount of any cash or credit refund made upon any sale of any products or services claimed to be defective or unsatisfactory; iii) sales of fixtures and manufacturers for credit, and iv) member fees.

The Contractor shall submit to the County on or before the 20th day following the end of each month 1) a statement detailing gross revenue, expenses, and net revenue for each revenue stream; and 2) payment due to the County for additional revenue derived from gross receipts. The revenue statement must be accompanied by the supporting documentation necessary to substantiate and/or audit the statement. The statement referred to herein shall be in such form and style and include such details and analyses, as the County may reasonably determine as necessary and required.

Notes:

1. The Annual Management Fee shall be firm and fixed for the initial 5-year term (through July 31, 2019). Any extensions pursuant to Article 8 of the Agreement will be at the then current rates, unless the County approves an adjustment to the fee.
2. Prior to exercising the option to renew period, the County may consider a onetime adjustment to the annual management fee for that option period, based upon the latest issue of the Consumer Price Index (CPI) published by the U.S. Department of Labor, Bureau of Labor Statistics for All Urban Consumers, All Items, Miami-Fort Lauderdale, FL area. Fee adjustment shall not exceed 3% of the current annual management fee. The Contractor shall provide written notification and justification to the County at least ninety (90) days prior to the Contract expiration date for any proposed increase. If no proposed increase request is received by this date, the annual management fee shall remain the same for the option to renew period. The County further reserves the right to negotiate the amount of the increase (up to the cap) with the Contractor.
3. Total Monthly Gross Receipts to be paid to the County shall be guaranteed for the initial 5-year term (through July 31, 2019).
4. Prior to exercising the option to renew period, the County may consider negotiating an upward increase of the Percentage of Total Monthly Gross Receipt payments made by the Contractor to the County, for that option period.
5. The County reserves the right to negotiate the final pricing for Additional Services and Related Expansion of Fitness and Wellness Program Services, at the County's sole discretion, in accordance with Appendix A – Scope of Services, Section 5.

Memorandum

MIAMI-DADE COUNTY

Date: January 23, 2014

To: Lester Sola
Director
Internal Services Department

Thru: Miriam Singer, CPPO
Assistant Director
Internal Services Department

From: Maria Carballeira, CPPB
Procurement Contracting Officer 2
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 873
Employee Fitness Center and Wellness Program Management Services

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The County issued a solicitation to obtain proposals from qualified fitness and wellness management firms interested in operating the downtown Employee Fitness Center (Center), as well as, serving as the County's facilitator and strategic partner in further evolving organizational wellness initiatives and exploring creative future expansion prospects.

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

Committee meeting dates:
November 21, 2013 (kick-off meeting)
January 7, 2014 (evaluation meeting, scoring)
January 13, 2014 (oral presentations, re-scoring, and recommendation)

Verification of compliance with contract measures:
Not applicable since no contract measures were assigned to this solicitation.

Verification of compliance with minimum qualification requirements:
The solicitation had minimum qualification requirements which were reviewed by the Chairperson and Dennys Gonzalez of the client department, Internal Services Department – Facilities and Utilities Management Division, who is the Project Manager and served as the technical advisor to the Committee. Both proposers met the minimum qualifications.

Local Certified Service-Disabled Veteran's Business Enterprise Preference:
Veteran's Preference was considered in accordance with the applicable ordinance. None of the proposers qualified for the preference.

Summary of scores:

The preliminary scores are as follows:

Pre-Oral Presentations

Proposer	Technical Score (max. 375)	Price Score (max.125)	Total Combined Score (max. 500)	Annual Fee/Percentage Gross Receipts Submitted
1. Aquila Fitness Consulting Systems LTD, Inc.	353	109	462	$171,545/20%

2. Complete Health and Fitness Concepts, Inc. dba NFC Amenity Management	318	103	421	$179,369/30%

The Committee decided to hold oral presentations with both proposers since their respective proposals required clarification.

The final scores are as follows:

Post-Oral Presentations

Proposer	Technical Score (max. 375)	Price Score (max.125)	Total Combined Score (max. 500)	Annual Fee/Percentage Gross Receipts Submitted
1. Aquila Fitness Consulting Systems LTD, Inc.	339	97	436	$171,545/20%
2. Complete Health and Fitness Concepts, Inc. dba NFC Amenity Management	317	115	432	$179,369/30%

Local Preference:
Local Preference was considered in accordance with the applicable ordinance, but did not affect the outcome as the highest ranked proposer, Aquila Fitness Consulting Systems LTD, Inc. (Aquila) is a local business.

Other Information:
In conducting the review of proposals for minimum qualifications, the Chairperson and the client department found that both proposers' submissions included staff members intended to provide fitness, health and wellness services which were not certified by an accredited National Commission for Certifying Agencies (NCAA) organization as required by the County. Accordingly, only the qualifications of those staff members who met the minimum requirements were considered for scoring purposes. Each proposer provided sufficient nationally certified staff members to meet the County's employee fitness center and wellness program management service needs.

Negotiations:
The Committee recommends that the County enter into negotiations with Aquila, the highest ranked proposer. The Committee further recommends and requests approval that in the event the County and Aquila cannot reach an agreement, negotiations with Aquila be terminated, and the County begin negotiations with the next highest ranked proposer, Complete Health and Fitness Concepts, Inc. dba NFC Amenity Management. The following individuals are recommended to participate in the negotiations:

Maria Carballeira, Procurement Contracting Officer 2, Internal Services Department
Dennys Gonzalez, Business Resources Coordinator, Internal Services Department
Sandra L. Jackson, Human Resources Manager, Miami-Dade Aviation Department

Consensus Statement:
The Committee recommends Aquila for the following primary reasons:

The firm has the necessary qualifications, relevant experience, and capabilities to effectively manage the existing downtown employee fitness center and serve as the County's wellness partner in furthering whole-health worksite integration, promotion and expansion. The firm currently manages three employee fitness centers in large metropolitan areas comparable in size and scope to that of the County, for both private and governmental organizations. Current agreements exist between Aquila and Carnival Cruise Lines, Miami, Florida, US Department of Homeland Security, Immigration & Customs Enforcement, Washington, DC, and US Department of Health, Centers for Disease Control & Prevention, Atlanta, Georgia. These sites are very similar in concept and design to the County's fitness center.

Aquila's operational plan demonstrates a sound commitment to organizational excellence through their comprehensive approach to recruiting, developing, evaluating and retaining employees. The firm has an established employee development plan that all employees take part in annually, peer mentorship program, performance based evaluation and pay process, and an educational and recertification incentive system which supports their employee retention levels and continuity of services.

Aquila provided a forward-thinking approach to providing the services, particularly demonstrating the firm's interest in expanding wellness initiatives over the anticipated agreement's initial five-year term. The firm practices customer care by ensuring a close working relationship with the County to primarily preserve the County's mature fitness program from becoming stagnant. Through their commitment to the continued promotion and marketing of the fitness center and the County's wellness initiatives, Aquila's proposed services include: a) access to "MY E-aquila", the firm's virtual portal providing members with easily accessible fitness program design, wellness libraries and nutritional advise, b) discount offerings to commercial fitness centers such as 24Hr Fitness, Gold's Gym and LA Fitness for County employees that do not have access to a fitness center at their place of employment, c) teleconference presentations and short-term group training programs at designated County sites, amongst additional strategies.

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

Approved

Lester Sola
Director

1/27/14
Date

RFP No. 873 (POST-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA ↓ / PROPOSERS →	Max. Points Per Member	Maximum Total Points (5 members)	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	125	109	113
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	100	83	93
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	150	125	133
Total Technical Points	75	375	317	339
Price, Payment and Financial Criteria	25	125	115	97
TOTAL POINTS	100	500	432	436
Ranking			2	1

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Signatures	Print	Date
M. Carballeira Chairperson	M. Carballeira	1/16/14
Reviewed By	Pearel P. Bethel	1/16/2014

RFP NO. 873 (POST-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMMITTEE MEMBER - JERRY HALL (ISD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	20	22
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	13	20
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	20	25
Total Technical Points	75	53	67
Price, Payment and Financial Criteria	25	20	15
TOTAL POINTS	100	73	82

RFP NO. 873 (POST-ORALS)
TITLE: *Employee Fitness Center & Wellness Program Management Services*
EVALUATION OF PROPOSALS
COMMITTEE MEMBER - SANDRA JACKSON (MDAD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC. D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	18	20
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	18	20
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	20	25
Total Technical Points	75	56	65
Price, Payment and Financial Criteria	25	25	18
TOTAL POINTS	100	81	83

RFP NO. 873 (POST-ORALS)
TITLE: Employee Fitness Center & Wellness Program Management Services
EVALUATION OF PROPOSALS
COMMITTEE MEMBER - SIMONA MARLOW (PCHD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	24	25
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	18	18
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	28	28
Total Technical Points	75	70	71
Price, Payment and Financial Criteria	25	23	21
TOTAL POINTS	100	93	92

RFP NO. 873 (POST-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMMITTEE MEMBER - SHAWN RAMIREZ (PROS)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past Performance related to providing the type of services requested in this solicitation	25	23	24
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	15	18
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	28	27
Total Technical Points	75	66	69
Price, Payment and Financial Criteria	25	22	21
TOTAL POINTS	100	88	90

RFP NO. 873 (POST-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMMITTEE MEMBER - IGNACIO DE ARMAS (WASD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past Performance related to providing the type of services requested in this solicitation	25	24	22
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	19	17
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this Solicitation	30	29	28
Total Technical Points	75	72	67
Price, Payment and Financial Criteria	25	25	22
TOTAL POINTS	100	97	89

RFP No. 873 (PRE-QUALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA ↓ / PROPOSERS →	Max. Points Per Member	Maximum Total Points (5 members)	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	125	105	117
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	100	86	96
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	150	127	140
Total Technical Points	75	375	318	353
Price, Payment and Financial Criteria	25	125	103	109
TOTAL POINTS	100	500	421	462
Proposer Ranking			2	1

59

Signatures	Print	Date
M. Carballeira **Chairperson**	M. Carballeira	1/16/14
Reviewed By	Pearl P. Bethel	1/16/2014

RFP NO. 873 (PRE-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMMITTEE MEMBER - JERRY HALL (ISD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	20	25
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	15	18
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	25	28
Total Technical Points	75	60	71
Price, Payment and Financial Criteria	25	20	22
TOTAL POINTS	100	80	93

RFP NO. 873 (PRE-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMMITTEE MEMBER - SANDRA JACKSON (MDAD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC. D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	15	20
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	18	22
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	20	25
Total Technical Points	75	53	67
Price, Payment and Financial Criteria	25	20	20
TOTAL POINTS	100	73	87

RFP NO. 873 (PRE-ORALS)
TITLE: Employee Fitness Center & Wellness Program Management Services
EVALUATION OF PROPOSALS
COMMITTEE MEMBER - SIMONA MARLOW (PCHD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this solicitation	25	24	25
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	20	20
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	29	30
Total Technical Points	75	73	75
Price, Payment and Financial Criteria	25	20	20
TOTAL POINTS	100	93	95

RFP NO. 873 (PRE-ORALS)

TITLE: Employee Fitness Center & Wellness Program Management Services

EVALUATION OF PROPOSALS

COMMITTEE MEMBER - SHAWN RAMIREZ (PROS)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past Performance related to providing the type of services requested in this solicitation	25	23	24
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	15	18
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this solicitation	30	25	28
Total Technical Points	75	63	70
Price, Payment and Financial Criteria	25	20	23
TOTAL POINTS	100	83	93

RFP NO. 873 (PRE-ORALS)
TITLE: Employee Fitness Center & Wellness Program Management Services
EVALUATION OF PROPOSALS
COMMITTEE MEMBER - IGNACIO DE ARMAS (WASD)

EVALUATION CRITERIA	Maximum Points	COMPLETE HEALTH AND FITNESS CONCEPTS, INC.D/B/A NFC AMENITY MANAGEMENT	AQUILA FITNESS CONSULTING SYSTEMS LTD INC
Proposer's relevant experience, qualifications, and past Performance related to providing the type of services requested in this solicitation	25	23	23
Relevant experience and qualifications of key personnel and staffing, including key personnel and staffers of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	20	18	18
Proposer's approach to providing the management and operations of the Center, development of therapeutic wellness programs and initiatives, and monitoring of services required in this Solicitation	30	28	29
Total Technical Points	75	69	70
Price, Payment and Financial Criteria	25	23	24
TOTAL POINTS	100	92	94

Memorandum

MIAMI-DADE COUNTY

Date: September 26, 2013

To: Those Listed Below

From: Carlos A. Gimenez
Mayor

Subject: Appointment of Selection Committee for Miami-Dade Internal Services Department Request for Proposals (RFP) for Employee Fitness Center & Wellness Program Management Services – RFP No. 873

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for Miami-Dade Internal Services Department Request for Proposals (RFP) for Employee Fitness Center & Wellness Program Management Services – RFP No. 873

Selection Committee
Maria Carballeira, ISD (Non-Voting Chairperson)
Jerry Hall, ISD
Sandra Jackson, MDAD
Simona Marlow, PHCD
Shawn Ramirez, PROS
Ignacio De Armas, WASD
Eloisa Montoya, MDCR (Alternate)

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

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

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

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

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

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

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

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

c: Lester Sola, Director, ISD
Emilio Gonzalez, Director, MDAD
Gregg Fortner, Director, PHCD
Jack Kardys, Director, PROS
John Renfrow, Director, WASD
Tim Ryan, Director, MDCR
Jack Osterholt, Deputy Mayor/Director, RER
Veronica Clark, Assistant to the Director, SBD/RER

Selection Committee
Maria Carballeira, ISD (Non-Voting Chairperson)
Jerry Hall, ISD
Sandra Jackson, MDAD
Simona Marlow, PHCD
Shawn Ramirez, PROS
Ignacio De Armas, WASD
Eloisa Montoya, MDCR (Alternate)