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

Memorandum

MIAMI-DADE COUNTY

Date: February 2, 2016

Agenda Item No. 8(F)(7)

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award: Psychological Evaluation Testing for Public Safety Personnel

Resolution No. R-108-16

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the award of *Request for Proposals No. 00226, Psychological Evaluation Testing for Public Safety Personnel*, to Law Enforcement Psychological and Counseling Associates, Inc. for the administration of psychological evaluation and testing of County employees performing public safety functions (e.g., Police Officer, Police Dispatcher, Firefighter, Fire Rescue Dispatcher and Correctional Officer).

Under the contract, the evaluation services encompass standardized tests, clinical interview and written recommendations to determine an employee's suitability to perform a public safety position. The psychological evaluation will be conducted by Florida Board of Psychology-licensed clinical psychologists and is designed to identify: (1) positive psychological characteristics associated with successful job performance; (2) traits that may interfere with effective job performance; (3) emotionally unsuitable candidates; (4) potential for violence, suicide, aggression and substance abuse; (5) personality problems and emotional disorders; and (6) stress management characteristics. The Corrections and Rehabilitation, Police, and Fire Rescue Departments will use Law Enforcement Psychological and Counseling Associates, Inc.'s recommendations during their hiring and fitness-for-duty decision-making processes.

Scope

The impact of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is $2,788,000. The current contract, *RFP700*, is valued at $1,959,000 for a five-year and six-month term. The allocation under the replacement contract is higher due to a projected aggressive hiring plan for the Public Safety departments which include: Miami-Dade Corrections and Rehabilitation Department, Miami-Dade Fire Rescue Department, and Miami-Dade Police Department.

Department	Allocation	Funding Source	Contract Manager
Corrections and Rehabilitation	$1,563,000	General Fund	Mohammed Haq
Fire Rescue	350,000	Fire District	Marianela Betancourt
Police	875,000	General Fund	Laura Romano
Total	**$2,788,000**		

Track Record/Monitor

Melissa Camillo-Castillo 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 all provisions of the contract, including any extensions or renewals, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition on August 3, 2015. Two (2) proposals were received in response to the solicitation. The proposal from Cognitive Health Network Corporation was deemed non-responsive by the County Attorney's Office (see attached opinion) for failure to include a price schedule and other material elements required for evaluation.

Law Enforcement Psychological and Counseling Associates, Inc., the recommended vendor, has a team of qualified professionals with substantial experience as well as the requisite professional degrees and licenses needed to deliver the solicited services. The firm offers continuous availability, ease of accessibility, and contingency plans that meet the County's aggressive hiring plan. Moreover, the firm has been instrumental in the field of developing public safety guidelines for pre-employment and fitness-for-duty evaluations.

Awardee	Principal Address	Local Address	Principal
Law Enforcement Psychological and Counseling Associates, Inc.	9960 NW 116 Way, Suite 12 Miami, FL	Same	Brian Mangan

Vendor Not Recommended for Award

Proposer	Reason for Not Recommending
Cognitive Health Network Corporation	Proposal deemed non-responsive by County Attorney's Office

Due Diligence

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

Pursuant to Resolution No. R-140-15, prior to the re-procurement of this replacement contract, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding multiple meetings and drafting sessions with user departments.

Applicable Ordinances and Contract Measures

- The two (2) percent User Access Program provision applies and will be collected on all purchases.
- The Small Business Enterprise Selection Factor and Local Preference were applied in accordance with the ordinances.
- The Living Wage Ordinance does not apply.

Russell Benford
Deputy Mayor

Attachment

Memorandum

MIAMI-DADE COUNTY

Date: August 24, 2015

To: Melissa Camillo-Castillo
Procurement Contracting Officer 2
Internal Services Department

From: Oren Rosenthal
Assistant County Attorney

Subject: RFP-00226: Psychological Evaluation Testing for Public Safety Personnel

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You have asked this office if the proposal submitted by Cognitive Health Network Corporation ("Cognitive") can be considered responsive to the above Request for Proposals ("RFP"). Your memo, dated August 24, 2015 reports that Cognitive did not submit critical portions of the proposal; specifically the Proposer Information Section and the Form B1; Price Schedule. Based upon this information Cognitive's proposal is not responsive. In general, a proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used a two part test to determine if a specific noncompliance in a bid would constitute a substantial and, thus, nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. See Glatstien v. City of Miami, 399 So. 2d 1005 (Fla. 3d DCA 1981). The failure to include a price and other necessary, material elements of a proposal is tantamount to not submitting any proposal.

Accordingly, based on the information you have provided Cognitive's proposal is not responsive. To ensure the information provided is accurate, please confirm with the vendor we use for accepting electronic proposals, if you have not already done so, that the absence of these forms are not the function of some fault of the County's system. Upon confirmation, you should reject this proposal.

Oren Rosenthal

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: February 2, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(7)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 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)(7)
2-2-16

RESOLUTION NO. R-108-16

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP 00226 TO LAW ENFORCEMENT PSYCHOLOGICAL AND COUNSELING ASSOCIATES, INC. FOR THE PROVISION OF PSYCHOLOGICAL EVALUATION AND TESTING OF PUBLIC SAFETY PERSONNEL FOR THE CORRECTIONS AND REHABILITATION, FIRE RESCUE AND POLICE DEPARTMENTS IN A TOTAL AMOUNT NOT TO EXCEED $2,788,000.00 OVER THE FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL PROVISIONS CONTAINED THEREIN PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

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 award of Contract No. RFP 00226 to Law Enforcement Psychological and Counseling Associates, Inc. for the provision of psychological evaluation and testing of public safety personnel for the Corrections and Rehabilitation, Fire Rescue and Police Departments, in substantially the form attached hereto and made a part hereof, as set forth in the incorporated memorandum in a total amount not to exceed $2,788,000.00 over the five-year term; and authorizes the County Mayor or County Mayor's designee to execute same and exercise all provisions contained therein, including any extensions for renewals, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of February, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

Psychology Evaluation Testing for Public Safety Personnel

Contract No. RFP-00226

THIS AGREEMENT made and entered into by and between Law Enforcement Psychological and Counseling Associates, Inc. a corporation organized and existing under the laws of the State of Florida, having its principal office at 9660 NW 116th Way, Suite 12, Miami, FL 33178 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide psychological evaluation testing for public safety personnel to include police officer, correctional officer, police public service aide, police dispatcher, police complaint officer, firefighter, fire department helicopter pilot, fire department co-pilot, fire rescue dispatcher applicant and fitness-for-duty evaluations for County personnel on an as needed basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 00226 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 August 14th, 2015, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

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

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

ARTICLE 1. DEFINITIONS

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

1. The word "ADA" to mean American Disabilities Act. This Act prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The ADA also establishes requirements for telecommunications relay services.

2. 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 RFP-00226 and all associated addenda, and the Contractor's Proposal.

3. The words "Contract Date" to mean the date on which this Agreement is effective.

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

5. The word "Contractor" to mean Law Enforcement Psychological and Counseling Associates, Inc. and its permitted successors.

6. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida. The County is located in the southeastern part of the state of Florida, and includes 35 incorporated cities and numerous other unincorporated areas.

7. The word "Days" to mean Calendar Days.

8. 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.

9. 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.

10. 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.

11. The words "Florida Board of Psychology" to mean a board that was legislatively established to ensure that every psychologist practicing in the state of Florida meets the minimum requirements for safe practice. It is responsible for licensing, monitoring, disciplining and educating psychologists to assure competency and safety to practice in Florida.

12. The words "International Association of Chiefs of Police (IACP)" to mean a dynamic organization that serves as the professional voice of law enforcement. IACP addresses cutting edge issues confronting law enforcement through advocacy, programs and research, as well as training and other professional services. IACP is a comprehensive professional organization that supports the law enforcement leaders of today and develops the leaders of tomorrow.

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

14. The word "Psychology" to mean the scientific study of the human mind and its functions, especially those affecting behavior in a given context.

15. The word "MDCR' to mean Miami - Dade Corrections Department.

16. The word "MDFR" to mean Miami - Dade Fire Department.

17. The word "MDPD" to mean Miami – Dade Police Department.

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

19. 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.

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

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A) 3) the Price Schedule (Appendix B), 4) Business Associate Addendum (Appendix C) 5) the Miami-Dade County's RFP -00226 and any associated addenda and attachments thereof, and 6) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

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

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

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

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

ARTICLE 4. NATURE OF THE AGREEMENT

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

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

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

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

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding

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

ARTICLE 5. CONTRACT TERM

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

ARTICLE 6. NOTICE REQUIREMENTS

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

(1) to the County

a) to the Project Manager: Miami Dade County

Major R. Cordero-Stutz, Personnel Management Bureau
Miami-Dade Police Department
9105 N.W. 25th street, Room 1095
Miami FL 33172
Attention: Lieutenant Caroline Klaus
Phone: 305-471-1945
E-mail: csklaus@mdpd.com

Commander John Prats
Miami-Dade Corrections and Rehabilitation
2525 N.W. 62nd Street, Rm 2000
Miami FL 33147
Attention: Alourdes Pierre
Phone: 786-263-6222
E-mail: SSD@miamidade.gov

Miami-Dade County
Miami-Dade Fire Department
9300 NW 41 Street
Doral, FL 33178
Attention: Madeline Clodfelter
Phone: 786-331-5116
Fax: 786-331-4601
E-mail: madeline.clodfelter@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: Director
Phone: (305) 375-5502
E-mail: singer@miamidade.gov

(2) To the Contractor

Law Enforcement Psychological and Counseling Associates, Inc.
9960 NW 116 Way, Suite 12
Miami, FL 33178
Attention: Brian Mangan
Phone: 305-442-8800
E-mail: bmangan@lepca.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be pursuant to Appendix B, Price 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 8. PRICING

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

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest

from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County 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 Police Department
9105 N.W. 25th Street, Room 1095
Miami FL 33172
Attention: Lieutenant Caroline Klaus

OR

Miami-Dade Corrections and Rehabilitation Department
2525 N.W. 62 Street, Suite #2100
Miami FL 33144
Attention: Madeline Ferrer

OR

Miami-Dade Fire County,
Finance Department
111 NW 1st Street, 26th Floor
Miami, FL 33128
Attention: Shared Services Payable Unit

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

ARTICLE 10. INDEMNIFICATION AND INSURANCE

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

The Contractor shall 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:

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

B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

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

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

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

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

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

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

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within 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 11. MANNER OF PERFORMANCE

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

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

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

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

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

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

ARTICLE 12. EMPLOYEES OF THE CONTRACTOR

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

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

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

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

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

d) In the event of such dispute, the parties to this Agreement authorize the County 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 judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County 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 15. MUTUAL OBLIGATIONS

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

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

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

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 17. AUDITS

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

Pursuant to 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 18. SUBSTITUTION OF PERSONNEL

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

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 20. SUBCONTRACTUAL RELATIONS

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

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

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

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

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

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

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

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

ARTICLE 22. SEVERABILITY

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

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

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

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

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

d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any

time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

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

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

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

iii. cancel orders;

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

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

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

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

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

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

ARTICLE 24. EVENT OF DEFAULT

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

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

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

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

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

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

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

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

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's

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

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

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

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

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

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

a) lost revenues;

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

c) such other direct damages.

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

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

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

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

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

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

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

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

ARTICLE 28. CONFIDENTIALITY

a) All Developed Works as defined in Article 30 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.

d) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

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

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

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

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

ARTICLE 30. PROPRIETARY RIGHTS

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

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

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

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed

Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

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

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

2. *Miami-Dade County Employment Disclosure Affidavit (Section 2.8-1(d)(2) of the County Code)*

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

4. *Miami-Dade Disability and Nondiscrimination Affidavit*

   (Section 2-8.1.5 of the County Code)

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

6. *Miami-Dade County Vendor Obligation to County Affidavit*

   (Section 2-8.1 of the County Code)

7. *Miami-Dade County Code of Business Ethics Affidavit*

   (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

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

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

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

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

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

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

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

15. *FEIN Number or Social Security Number*
    In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

    - Identification of individual account records

- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

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

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

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

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

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews
Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review
According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. 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 shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

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

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

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

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, 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 34. 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, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

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

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

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

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

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

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

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

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

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

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

ARTICLE 37. BANKRUPTCY

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

ARTICLE 38. GOVERNING LAW

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

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Section 2-8.10 of the Miami-Dade County Code, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from the solicitation referenced on the first page of this Contract, and the utilization of the County

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

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. 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 41. 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 42. SURVIVAL

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

ARTICLE 43. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

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: BRIAN MANGAN, PsyD, ABPP	Name: Carlos A. Gimenez
Title: PRESIDENT	Title: Mayor
Date: 10/13/15	Date:
Attest: Mayte Aponte Commission # FF085487 Expires JAN 22, 2018 WWW.AARONNOTARY.com	Attest:
Corporate Secretary	Clerk of the Board
Corporate Seal/Notary Seal	Approved as to form and legal sufficiency
	Assistant County Attorney

Appendix A – Scope of Services

1.0 Introduction/Background

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade Police Department (MDPD), the Miami-Dade Department of Corrections and Rehabilitation (MDCR) and the Miami-Dade County Fire Rescue Department (MDFR), is soliciting proposals to obtain professional services from an experienced and qualified Contractor to conduct valid, reliable, and cross-cultural psychological testing for those applying for County employment in the following positions: police officers, correctional officers, police public service aides, police dispatchers, police complaint officers, firefighters, fire department helicopter chief pilots, fire department helicopter pilots, fire department helicopter co-pilots and fire rescue dispatcher. Services are to be provided at the Contractor's facility located in Miami-Dade County. The testing is required by the County as part of a comprehensive background investigation of applicants. The purpose of these services is to evaluate whether said applicants are acceptable candidates for public safety positions. Additionally, psychological testing may include fitness-for-duty evaluations for County personnel on an as needed basis.

The County is a vibrant, multicultural community of more than 2.5 million residents and hosts more than 12 million visitors each year. The County provides law enforcement and public safety services consistent with the needs of the community. Such services are directed toward creating and maintaining an environment that is safe, and as free of crime and disorder as legal, ethical and resource constraints permit. MDPD is charged with the task of promoting a safe, secure, crime free environment along with maintaining order and providing safe and expeditious flow of traffic. In order to accomplish this formidable task, it utilizes the services of approximately 2,900 sworn officers and 1,700 support personnel. MDFR is charged with the task of protecting people, property and the environment by providing responsive and humanitarian fire rescue services essential to public health, safety and well-being. MDFR is staffed by 2,429 employees; of whom almost 2,000 are uniformed firefighters. MDCR is charged with the task of serving the community by providing a safe, secure and humane detention of individuals in their custody while simultaneously preparing them for a successful return to the community. MDCR is comprised of five correctional facilities. These facilities hold on average 5,642 inmates, who are awaiting trial or are serving sentences of 364 days or less.

Assessing the psychological suitability of candidates for law enforcement positions is one of the essential functions in the hiring process as these employees must be able to tolerate the stresses of working in a fast-paced environment, follow rules, use resources responsibly, behave in a trustworthy manner, use good judgment, and refrain from off-duty behavior that would reflect poorly on the department. These evaluations provide assurance that candidates are free of job-relevant emotional and mental impairments, possess adequate stress resilience and emotional stability, and are able to meet the behavioral, social, and cognitive demands of public safety. The Contractor will analyze the data, conduct the clinical interview and present a recommendation to the appropriate hiring body that will identify: 1) positive psychological, characteristics associated with successful job performance, 2) traits that may interfere with effective job performance, 3) emotionally unsuitable candidates, 4) potential for violence, suicide, aggression and substance abuse, 5) personality problems and emotional disorders, and 6) stress management characteristics, etc. This analysis will assist in the determination of whether or not a candidate is mentally and emotionally capable as well as mature enough to work in the law enforcement/public safety field.

The table below provides the estimated number of candidates for evaluation based on applicant position. The estimated numbers are based on the prior year history and anticipated future needs and are provided for evaluation purposes only.

Estimated # of candidates to be evaluated

POLICE DEPT.	
Position Title (Phase 1& 2)	Estimated No. of Candidates Per Year
Police Officer	500
Police Public Service Aide	100
Police Dispatcher	75
Police Complaint Officer	75
FIRE DEPT	
Position Title (Phase 1 & 2)	Estimated No. of Candidates Per Year
Firefighter	350
Fire Dept. Helicopter Chief Pilot	2
Fire Dept. Helicopter Pilot	2
Fire Dept. Helicopter Co-Pilot	2
Fire Rescue Dispatcher	40
CORRECTIONS DEPT	
Position Title	Estimated No. of Candidates Per Year
Correctional Officer (Phase 1)	1500
Correctional Officer (Phase 2)	300
FITNESS FOR DUTY	
Position Title	Estimated No. of Candidates Per Year
Police Officer, Correctional Officer, Police Public Services Aides, Police Dispatcher, and Police Compliant Officer, Firefighter, Fire Dept. Helicopter Chief Pilot, Fire Dept. Helicopter Pilot, Fire Dept. Helicopter Co-Pilot, Fire Rescue Dispatcher or any civilian employee of Miami-Dade County	20

1.1 Minimum Qualification

1. The Contractor's clinical psychologist(s) that shall administer the psychological testing and evaluation shall be licensed with the Florida Board of Psychology.

2. The Contractor 's clinical psychologist(s) that shall administer the psychological testing and evaluation shall possess a doctoral-level degree in Psychology, for conducting the interview, performing the evaluation, and interpreting test data

1.2 Testing and Evaluation

The Contractor shall conduct County requested pre-employment psychological evaluations or fitness-for- duty evaluation that include a series of standardized tests as outlined below. Such evaluations shall be followed by a ***minimum*** 30 minute comprehensive clinical interview with the applicant after each Phase, in order to confirm or rule out the psychological characteristics identified during testing.

The pre-employment psychological evaluation test is comprised of two phases. Phase 1 is the personality suitability evaluation, and Phase 2 is the emotional stability evaluation. For MDPD Phase 1 and Phase 2 will be conducted at

the same time as a pre-employment evaluation. For MDCR and MDFR, Phase 1 will be conducted as a pre-employment evaluation and Phase 2 as a post – employment evaluation.

Any testing administered must be objective, job related, non-discriminatory, and validated for use with public safety candidates.

- **Pre-Employment Testing for Police Officer, Correctional Officer, Firefighter, Fire Department Helicopter Chief Pilot, Fire Department Helicopter Pilot, and Fire Department Co-Pilot selection**

  Phase 1: Administration and interpretation of one or more tests which identify and assess personality suitability characteristics to include but not limited to: maturity, responsibility, socialization adequacy, flexibility, general academic potential, interpersonal conflict measures (assertiveness, moodiness, social alienation, family discord), social ability, initiative/goal orientation, strong racial or ethnic prejudice, job performance predictions of absence, lateness, and disciplinary actions.

  Phase 2: Administration and interpretation of one or more tests which identify and assess emotional suitability characteristics to include but not limited to: psychosis, character disorders (especially anti-social personality disorders), significant neurotic symptomatology (phobic personality, undue suspiciousness), mood disorders (anxiety, depression), poor impulse control (anger/hostility patterns), need for high levels of excitement, tendency to be very passive or aggressive in the face of conflict, strong racial or ethnic prejudice, poor self-concept, job performance predictions of absence, lateness, and disciplinary, substance abuse tendencies.

- **Pre-Employment Testing for Public Service Aides**

  Phase 1: Administration and interpretation of one or more tests which identify and assess the following personality suitability characteristics to include but not limited to: academic potential, positive adjustment, maturity, responsibility, socialization adequacy, flexibility, compliance to rules and regulations, interpersonal conflict measures (assertiveness, moodiness, social alienation, family discord), social ability, initiative/goal orientation.

  Phase 2: Administration and interpretation of one or more tests which identify and assess emotional suitability characteristics to include but not limited to: psychosis, character disorders (especially anti-social personality disorders), significant neurotic symptomatology (phobic personality, undue suspiciousness), mood disorders (anxiety, depression), poor impulse control (anger/hostility patterns), , need for high levels of excitement, tendency to be very passive or aggressive in the face of conflict, strong racial or ethnic prejudice, poor self-concept.

- **Pre-Employment Testing for Police Dispatcher, Police Complaint Officers and Fire Rescue Dispatchers**

  Phase 1: Administration and interpretation of one or more tests which identify and assess personality suitability characteristics to include but not limited to: academic potential, positive adjustment, maturity, responsibility, socialization adequacy, flexibility, compliance to rules and regulations, interpersonal conflict measures (assertiveness, moodiness, social alienation, family discord), social ability, initiative/goal orientation.

  Phase 2: Administration and interpretation of one or more tests which identify and assess emotional suitability characteristics to include but not limited to: psychosis, character disorders (especially anti-social personality disorders), significant neurotic symptomatology (phobic personality, undue suspiciousness), mood disorders (anxiety, depression), poor impulse control (anger/hostility patterns), need for high levels of excitement, tendency to be very passive or aggressive in the face of conflict, strong racial or ethnic prejudice , poor self-concept.

- **Fitness for Duty Evaluation for All Positions**

  The Contractor shall provide fitness for duty evaluations at the request of the County. The Contractor shall be responsible for applying the evaluation tools necessary to administer and interpret additional psychological testing to access the fitness of the employees to return to work for Sworn Police Officers, Correctional Officers, Firefighters, Fire Department Helicopter Chief Pilot, Fire Department Helicopter Pilot, and Fire Department Co-Pilot, Police Public Service Aides, Police Dispatchers, Fire Rescue Dispatchers and Police Complaint Officers that have been mandated for a Fitness-For-Duty evaluation or any civilian County employee to include but not limited to MDPD, MDFR and MDCR. The Contractor shall make appropriate referrals to both the Candidate and the authorized County staff for medical, psychiatric evaluation when medical, psychiatric or medication concerns may impact fitness for duty.

1.3 <u>Contractor Qualifications and Services to be Provided</u>

A. The Contractor must have significant experience and must be regularly and continuously engaged in providing pre-employment psychological screening in law enforcement, first respondent and dispatchers.

B. The Contractor must follow all guidelines and comply with any current International Association of Chiefs of Police (IACP) standards for both the written test and the interview (reference Attachment A - Pre-Employment Psychological Evaluation Guidelines).

C. The Contractor shall conduct the pre-employment psychological evaluation service and fitness –for-duty evaluations and ensure provisions are established for the security and confidentiality of all testing materials, psychological results reports, statistical and any other raw data in accordance with the Americans with Disabilities Act (ADA), the Health Portability and Accountability Act (HIPPA) and any federal or state laws applicable in the Contractor's jurisdiction.

D. The Contractor will use written tests that are appropriate evaluations on the occupational exposure of the job classification for public safety.

E. The Contractor shall only test those applicants who are referred to them exclusively by authorized County staff.

F. The Contractor shall provide the County with a complete glossary of all scales and terms relevant to the screening process and evaluation report.

G. The Contractor shall provide documentation that outlines the results of research and investigation to assure that all tests and procedures used in the screening process are valid, reliable, cross cultural, and relevant to future job performance for the job classifications for which applicants are evaluated.

H. The Contractor shall provide evaluations, test booklets, answer sheets, examiner instructions, taped and written instructions, case notes and other materials at the request of authorized County Staff.

I. The Contractor shall re-test and re-evaluate applicants as requested by the County.

J. The Contractor shall appear and testify in a court of law and at administrative hearings regarding work performed herein. This requirement shall survive the termination or expiration of the subsequent agreement.

K. The Contractor evaluation staff shall, at the request of the County; a) be available for telephone consultation and occasional meetings to discuss and clarify evaluation results, and b) participate in quarterly meetings (or as required) with the County to review specific test results or developments and milestone events in the psychological testing services program.

L. The Contractor shall have access to sufficient computers and ancillary equipment necessary, to score test results, develop performance profiles, prepare various statistical and summary reports, and store all test and evaluation data.

M. The Contractor shall conduct a feedback session with applicants to discuss the results of the evaluation, at the request of the County

1.4 Reporting

The Contractor shall submit any and all reports as specified below, or to be specified in writing by the County's staff assigned to this project at a later date. These reports will include, but are not limited to the following:

A. Test Results and Clinical Interview Result

1. The Contractor shall provide the County with an electronic written evaluation report to be delivered within 48 hours via electronic mail from the date of testing. The reports shall include (1) a standardized rating scale indicating a specific rating regarding the applicant / employee based on the essential functions for the sworn or non-sworn position, (2) an evaluation of the employees' suitability for the position upon analysis of all psychological materials to include test data and interview results, (3) a recommendation based on the analysis, along with a justification and any reservations that the psychologist might have regarding the validity or reliability of the results.

2. The Contractor shall maintain all psychological test files electronically in a secure manner in accordance with the Americans with Disabilities Act (ADA), the Health Portability and Accountability Act (HIPPA) and any federal or state laws applicable in the Contractor's jurisdiction for the life of the contract at no additional cost to the County. Upon termination or expiration of the resultant contract, the Contractor will forward all psychological evaluation test files electronically to the County at no additional charge to the County.

3. The Contractor shall deliver expedited tests and clinical interview results via electronic mail or by courier service if unable to do so electronically as requested by the County, but in no case shall they be delivered later than 10.00a.m. on the first business day following the day on which the expedited request was made.

4. In the event that the Contractor experiences computer failure and is unable to electronically submit reports, the Contractor shall provide courier services, during normal working hours, for delivery of reports to the offices of MDPD, MDCR, MDFR, and any other County Office as specified at the time. Courier services shall not be billed to the County.

   NOTE: The Contractor shall comply with the Americans with Disabilities Act (ADA), the Health Portability and Accountability Act (HIPPA) and any federal or state laws applicable in the Contractor's jurisdiction when providing reports.

B. Statistical Reports

The Contractor shall provide semi-annual and annual statistical reports electronically at the request of the County. Reports shall be in the format, and shall contain the data fields, requested by the County. Reports shall include but not be limited to: a) the number of applicants tested; b) the number of applicants tested by race, ethnicity, and gender; c) the number of applicants in each rating category, by race, ethnicity, and gender; d) the number of applicants in each rating category, by race, ethnicity, and gender, for a specific timeframe, etc.

1.5 Location Hours of Service and Availability

A. Location

The Contractor shall have an office or a facility located in Miami-Dade County for applicant testing and evaluation. The office or facility must be of sufficient size and accommodation to process approximately 30 to 50 applicants per week; however, the number of applicants may fluctuate, depending on the County's need. In the event that a high volume of applicants are being simultaneously processed for pre-employment by MDPD, MDCR, MDFR, and any other County department to meet academy deadlines or hiring mandates, the Contractor shall have the ability to accommodate the request to test additional applicants with a minimum of 72 hours' notice.

B. Hours of Service and Availability

The Contractor shall perform testing and evaluation services from 8 a.m. to 5p.m., Monday through Friday, and depending on the volume of the applicants that the County needs to have processed, the Contractor shall have the ability to perform testing on Saturdays and County Observed Holidays.

The Contractor shall also be available for telephone consultations to address administrative issues as requested by the County.

C. Applicant Referrals

Applicants or employees must be referred for Phase 1 and Phase 2 evaluations, and any follow up appointments by the authorized County staff. The Contractor will work with the County on an as needed to schedule applicants or employees for the psychological testing.

D. Scheduling Applicants

The Contractor shall have the ability to schedule applicants or employees for pre-employment testing or fitness-for-duty utilizing an electronic online scheduler that is accessible 24 hours per day, 7 days per week. The Contractor may issue specific username and passwords to all authorized users. In the event the online scheduler is temporarily inoperable, the County shall provide the names of the applicants via electronic mail, telephone, or facsimile.

Appendix B- Price Schedule

CONTRACTOR RATES

The rates outlined below are for the term of the contract and include all out-of-pocket expenses, including materials, employee travel, per diem, and miscellaneous costs and fees.

GROUP 1: POLICE DEPARTMENT

A. POLICE DEPARTMENT (*Regular Business Hours 8AM-5PM)*

Position Title	Rate for Phase 1 & Phase 2 Combined. Years 1-3 (price per applicant)	Rate for Phase 1 & Phase 2 Combined. Years 4 & 5 (price per applicant)
Police Officer	$258.00	$265.00
Police Public Service Aide	$160.00	$175.00
Police Dispatcher	$160.00	$175.00
Police Complaint Officer	$160.00	$175.00

B. POLICE DEPARTMENT *(After Hours, Saturday's and Holidays)*

Position Title	Rate for Phase 1 & Phase 2 Combined. Years 1-3 (price per applicant)	Rate for Phase 1 & Phase 2 Combined. Years 4 & 5 (price per applicant)
Police Officer	$258.00	$265.00
Police Public Service Aide	$160.00	$175.00
Police Dispatcher	$160.00	$175.00
Police Complaint Officer	$160	$175.00

GROUP 2: FIRE DEPARTMENT

A. FIRE DEPARTMENT (*Regular Business Hours 8AM-5PM)*

Position Title	Rate for Phase 1 Year 1-5 (price per applicant)	Rate for Phase 2 Year 1-5 (price per applicant)
Firefighter	$220.00	$45.00
Fire Dept. Helicopter Chief Pilot	$220.00	$45.00
Fire Dept. Helicopter Pilot	$220.00	$45.00
Fire Dept. Helicopter Co-Pilot	$220.00	$45.00
Fire Rescue Dispatcher	$ 160.00	$40.00

B. FIRE DEPARTMENT *(After Hours, Saturday's and Holidays)*

Position Title	Rate for Phase 1 Year 1-5 (price per applicant)	Rate for Phase 2 Year 1-5 (price per applicant)
Firefighter	$220.00	$45.00
Fire Dept. Helicopter Chief Pilot	$220.00	$45.00
Fire Dept. Helicopter Pilot	$220.00	$45.00
Fire Dept. Helicopter Co-Pilot	$220.00	$45.00
Fire Rescue Dispatcher	$160.00	$40.00

GROUP 3: CORRECTIONS AND REHABILITATION DEPARTMENT

A. CORRECTIONS AND REHABILITATION DEPARTMENT *(Regular Business Hours 8AM-5PM)*

Position Title	Rate for Phase 1 Year 1-5 (price per applicant)	Rate for Phase 2 Year 1-5 (price per applicant)
Correctional Officer	$220.00	$45.00

B. CORRECTIONS AND REHABILITATION DEPARTMENT *(After Hours, Saturday's and Holidays)*

Position Title	Rate for Phase 1 Year 1-5 (price per applicant)	Rate for Phase 2 Year 1-5 (price per applicant)
Correctional Officer	$220.00	$45.00

GROUP 4: FITNESS FOR EVALUATION

A. FITNESSS-FOR-DUTY EVALUATION *(Regular Business Hours 8AM-5PM)*

Position Title	Rate Year 1-5 (price per evaluation)
Police Officer, Correctional Officer, Police Public Services Aides, Police Dispatcher, and Police Compliant Officer, Firefighter, Fire Dept. Helicopter Chief Pilot, Fire Dept. Helicopter Pilot, Fire Dept. Helicopter Co-Pilot, Fire Rescue Dispatcher or any civilian employee of Miami-Dade County	$550.00

B. FITNESSS-FOR-DUTY EVALUATION (*After Hours, Saturday's and Holidays)*

Position Title	Rate Year 1-5 (price per evaluation)
Police Officer, Correctional Officer, Police Public Services Aides, Police Dispatcher, and Police Compliant Officer, Firefighter, Fire Dept. Helicopter Chief Pilot, Fire Dept. Helicopter Pilot, Fire Dept. Helicopter Co-Pilot, Fire Rescue Dispatcher or any civilian employee of Miami-Dade County	$550.00

Appendix C
HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Law Enforcement Psychological and Counseling Associates, Inc. ("Contractor"), Business Associate ("Associate").

RECITALS

A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, ePHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

1. Definitions. Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. "Electronic Media" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. "Security incident" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

2. Obligations of Associate.

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

3. Audits, Inspection and Enforcement. From time to time, after reasonable notice, upon any breach of this Addendum by Associate, the County may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. The fact that the County inspects, or fails to utilize its right to inspect, Associate's facilities, systems, books, records, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

4. Termination.

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. Indemnification. Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, 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 Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate 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 any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Associate expressly understands and agrees that any insurance protection required by this Addendum, or otherwise provided by Associate, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

6. Limitation of Liability. Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

7. Amendment

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment of Appendix C. In addition to amendments described in 7a above, Appendix C may otherwise be modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement."

8. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to the County at the County's convenience upon reasonable notice, at no cost to the County, to testify as witnesses, for document production, or otherwise, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. Effect on Agreement. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

10. Interpretation. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

11. Jurisdiction. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

Attachment A

Pre-Employment Psychological Evaluation Guidelines

Pre-Employment Psychological Evaluation Guidelines

Ratified by the IACP Police Psychological Services Section
Denver, Colorado, 2009

1. Purpose

1.1. The IACP Police Psychological Services Section (PPSS) developed these guidelines for use by public safety agencies and individuals who are charged with the responsibility of conducting defensible pre-employment psychological evaluation programs.

2. Limitations

2.1. These guidelines are not intended to establish a rigid standard of practice for pre-employment psychological evaluations. Instead, they are intended to reflect the commonly accepted practices of the PPSS members and the agencies they serve.

2.2. Each of the guidelines may not apply in a specific case or in all situations. The decision as to what is or is not done in a particular instance is ultimately the responsibility of each hiring agency and psychologist.

2.3. Nothing in these guidelines should be construed to discourage scientific research, innovation, and/or use of new techniques that show promise for helping hiring agencies identify, screen, and select qualified candidates. Hiring agencies and psychologists who choose to use these practices may wish to consult with legal counsel to assess the potential liability exposure.

2.4. These guidelines are written to apply to agencies within the jurisdiction of the United States and, as such, may require modification for use by agencies in other countries.

3. Definitions

3.1. For the purpose of these guidelines, a pre-employment psychological evaluation is a specialized examination of an applicant's psychological suitability for a public safety position. These positions include, but are not limited to, positions where incumbents have arrest authority or the legal authority to detain and confine individuals.

3.2. Psychological suitability includes, at a minimum, the absence of job-relevant mental or emotional conditions that would reasonably be expected to interfere with safe and effective performance.

3.3. Under the terms of the Americans with Disabilities Act[1] (ADA) a procedure or test that seeks information about an individual's physical or mental impairments or health, or that provides evidence that would lead to identifying a mental disorder or impairment, is a "medical examination." Therefore, a pre-employment psychological evaluation constitutes a medical examination.

3.4. A pre-employment psychological evaluation may include procedures or tests that are not medical in nature (i.e., designed and used to measure personality traits, behaviors, or characteristics such as judgment, stress resilience, anger management, integrity, conscientiousness, teamwork social competence). However, these non-medical procedures alone would not constitute a complete pre-employment psychological evaluation since they do not include the required elements specified in 3.2 and 3.3.

3.5. The ADA plays an important role in the timing of when the evaluation can be performed in the hiring process. Under the ADA, the use of medical inquiries or examinations may occur only after (a) the hiring agency has obtained and analyzed all relevant non-medical information which it reasonably could have obtained and analyzed, and (b) the applicant has been given a conditional offer of employment.

4. **Examiner Qualifications**

4.1. Evaluations should be conducted by licensed doctoral-level psychologists, except where otherwise permitted by law, with expertise in clinical psychological testing and assessment, as well as in personnel evaluation using measures of normal personality characteristics, skills, and abilities. Psychologists should also be trained and experienced in psychological evaluations for public safety positions, in particular.

4.2. Psychologists should be familiar with the research literature available on psychological testing for public safety positions. Psychologists should also be familiar with employment law impacting the conduct of pre-employment psychological evaluations, including but not limited to the ADA, or other federal and state laws applicable to the practitioner's jurisdiction. Psychologists should consult with legal counsel when appropriate.

4.3. Psychologists must adhere to ethical principles and standards for practice in their jurisdiction.

[1] Please see the Equal Employment Opportunity Commission's Enforcement Guidance, *ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations*, at www.eeoc.gov/policy/docs/preemp.html.

5. **Job Analysis**

5.1. Information about duties, powers, demands, working conditions, and other job-analytic information relevant to the intended position, should be obtained by the psychologist before beginning the evaluation process. This information should be directed toward identifying behaviors and attributes that underlie effective and counterproductive job performance.

5.2. The psychologist should consult with the hiring agency to establish selection criteria and the agency's level of acceptable risk for problematic behaviors.

6. **Disclosure**

6.1. Prior to the administration of any psychological instruments and interview, the psychologist and/or hiring agency should disclose information to the applicant that includes (1) the nature and objectives of the evaluation, (2) the intended recipients, (3) that the hiring agency is the client, (4) the probable uses of the evaluation and the information obtained, (5) who will have access to the information, and (6) the limits of confidentiality.

6.2. The disclosure should be documented in writing and signed by the applicant.

7. **Testing**

7.1. **Use:** A written test battery, including objective, job-related psychological assessment instruments, should be administered to the applicant. Test results should be available to the evaluator before the interview is conducted.

7.1.1. The licensed psychologist should always retain responsibility to verify and interpret all psychological test results.

7.1.2. Tests should be administered, scored, and interpreted according to the publisher's recommendations and consistent with established test administration standards.

7.1.3. Test scales, profiles, and reports used for selection purposes should be produced using appropriate, current software or scoring keys licensed by the publisher of the test.

7.2. **Validity:** Written assessment instruments should have validation evidence for use with public safety applicants.

7.2.1. Tests should have a substantial research base for interpretation with normal range populations in general and public safety applicants in particular. Validation evidence should be consistent with *Principles for the Validation and Use of Personnel Selection Procedures.*[2]

[2] Please see the *Principles for the Validation and Use of Personnel Selection Procedures*, 4th ed., August 2003, at http://www.siop.org/_Principles/principles.pdf.

7.2.2. Specific cut-off scores should be used only when there is adequate statistical evidence that such scores are predictive of personality or mental health problems that are detrimental to job performance. If cut-off scores are used, the psychologist should acknowledge their use and be prepared to provide the justification for using the specific cut-off level.

7.2.3. New or emerging psychological instruments may be added to a battery to develop the requisite norms and validation, but should not be used for decision making by the evaluating psychologist during the data gathering process.

7.3. **Security:** The psychologist should make provisions for the security and confidentiality of all testing materials (e.g., test booklets/items) including materials presented electronically. Provisions should also be made for the security of, access to, and retention of the psychological reports and raw data, including information stored or transmitted electronically.

8. **Interview**

8.1. Individual, face-to-face interviews with applicants should be conducted before a final determination of the applicant's psychological suitability is made.

8.2. A semi-structured, job-related interview format should be employed with all applicants.

8.3. Interviews should allow for sufficient time to cover appropriate background, test results verification, and clinical assessment.

9. **Background Information**

9.1. Information regarding the applicant's relevant history (e.g., school, work, interpersonal, family, legal, financial, substance use, mental health) should be collected and integrated with psychological test and interview data. When available, relevant information from the background investigation and polygraph examination should be shared with the psychologist.

9.2. If relevant to psychological suitability, health records should be obtained from treating healthcare professional(s) for review before a final determination is made of the applicant's suitability. When such records are unavailable, consideration should be given to deferring the suitability determination until the health record can be reviewed or the basis for the concern is otherwise resolved.

9.3. When background investigation findings are not provided to the psychologist in advance of the evaluation, it is desirable for the psychologist to communicate with designated hiring agency staff, prior to making a final suitability determination, to compare and reconcile information obtained from the applicant. In all cases, substantive discrepancies between information obtained

in the psychological evaluation and other stages of the hiring process should be reviewed thoroughly with the hiring agency before a final hiring decision is made.

10. Reports

10.1. The hiring agency administrators directly involved in making employment decisions should be provided with a written report of the psychologist's evaluation. The report should contain, at a minimum, a clear determination of the applicant's psychological suitability for employment based upon an analysis of all psychological assessment material, including background information, test data, and interview results. Any agency-specific restrictions or other requirements relevant to the format or content of the psychological report should be communicated to the psychologist in advance of the evaluation.

10.2. Ratings and/or recommendations for employment based upon the results of the evaluation should be expressly linked to the job-analytic information referenced in paragraphs 5.1 and 5.2.

10.3. While a clinical assessment of overall psychological suitability should be made, clinical diagnoses or psychiatric labeling of applicants should be avoided unless relevant to the psychologist's conclusion, necessary for the hiring agency to make an employment decision, and/or required by law. In all cases, the evaluation should be focused on an individual applicant's ability to safely and effectively perform the essential functions of the position under consideration.

10.4. Conclusions concerning an applicant's qualifications should be based generally on consistencies across data sources rather than a single source; psychologists should justify exceptions to this guideline.

10.5. Additional information, including ratings, recommendations, justifications for the recommendation and/or rating, reservations that the psychologist might have regarding the validity or reliability of the results, and other elements required by law in the hiring agency's jurisdiction, should be disclosed on a need-to-know basis, in consultation with the hiring authority.

10.6. The report should clearly state the period of time for which the evaluation is considered valid. In the absence of a legally prescribed limitation, reports should be valid for no longer than one year from completion of the evaluation.

10.7. The written report provided to the agency should be securely maintained in accordance with applicable regulations.

11. Use of the Evaluation

11.1. Efforts should be made to inform the hiring agency's administrators about the strengths and limitations of pre-employment psychological evaluations.

11.2. Pre-employment psychological evaluations should be used as one component of the overall hiring process.

11.3. Care should be taken when using pre-employment test results for purposes other than making pre-employment decisions.

11.4. The hiring agency should not use the pre-employment evaluation for promotional evaluations or for positions not expressly considered by the psychologist at the time of the evaluation.

12. Follow-Up

12.1. Continuing collaborative efforts by the hiring agency and evaluating psychologist should be made to assess the accuracy of the final suitability determination. Follow-up data should be collected in accordance with strict confidentiality provisions protecting individual applicant identities and in accordance with ethical research guidelines and the law.

12.2. The psychologist and/or hiring agency should evaluate whether final suitability ratings have an adverse impact on protected classes of candidates.

12.3. Psychologists should be prepared to defend their procedures, conclusions, and recommendations if a decision based on psychological evaluation results is challenged.

13. Appeals and Second Opinions

13.1. Hiring agencies that permit second-opinion evaluations as part of an appeal process should require that these psychological evaluations be based upon the same criteria used for the initial psychological evaluation.