

**DEPARTMENTAL INPUT  
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION**

Rev 1

New contract - Legacy   
  OTR   
  CO   
  SS   
  BW   
  Emergency

Previous Contract/Project No: SS9152-4/17-2
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Re-Bid   
  Other

LIVING WAGE APPLIES: \_\_\_ YES \_\_\_  NO

**Requisition/Project No:** RQID1500062      **TERM OF CONTRACT:** 4 years with 2  
Options-to-Renew for 2 years each

**Requisition/Project Title:** Telephone Surveillance System

**Description:** This contract will provide the Miami Dade Police Department (MDPD) with the required software maintenance and support services for its Telephone Surveillance System (System) purchased in 2003. Pen-Link Ltd. is the sole proprietor of all PEN-LINK ® LINCOLN software products, including maintenance and support services.

**User Department(s):** MDPD

**Issuing Department:** Internal Services, Procurement Mgmt. Services Div.

**Contact Person:** Mike Ramos      **Phone:** 305-375-5215

**Estimated Cost:** \$210,500.00  
**Funding Source:** General Fund

**ANALYSIS**

Commodity/Service No: <b>680-87</b> SIC:			
<b>Trade/Commodity/Service Opportunities</b>			
Contract/Project History of Previous Purchases For Previous Three (3) Years Check Here <input type="checkbox"/> if this is a New Contract/Purchase with no Previous History			
	<u>EXISTING</u>	<u>2<sup>ND</sup> YEAR</u>	<u>3<sup>RD</sup> YEAR</u>
Contractor:			
Small Business Enterprise:			
Contract Value:			
Comments:			
Continued on another page (s): ___ Yes ___ No			

**RECOMMENDATIONS**

SBE	Set-Aside	Sub-Contractor Goal	Bid Preference	Selection Factor
		%		
		%		
		%		
		%		

<b>Basis of Recommendation:</b> Maintain SBE Bid Preference as current contract

Signed: Mike Ramos

Date to DBD: 3/12/15

Date Returned to DPM: \_\_\_\_\_



**TELEPHONE SURVEILLANCE SYSTEM MAINTENANCE AND SUPPORT AGREEMENT**

THIS SOFTWARE MAINTENANCE, AND SUPPORT AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN 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"), AND PEN-LINK LTD. (HEREINAFTER REFERRED TO AS THE "LICENSOR") A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEBRASKA, HAVING ITS PRINCIPAL OFFICE AT 5936 VANDERVOORT DRIVE, LINCOLN, NE 68516

**RECITALS**

WHEREAS, the Licensor has offered to provide software maintenance, updates, upgrades, and support for 15 user intercepts and 12 channel licenses for the PEN-LINK ® LINCOLN System (System) that conforms to the Scope of Services (Appendix A) for the Miami-Dade Police Department.

WHEREAS, the County desires to procure from the Licensor such software maintenance, updates, upgrades, and support for 15 user intercepts and 12 channel licenses for the PEN-LINK ® LINCOLN System (System) 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**

1.1 "Documentation" shall mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to the County in connection with the Software.

1.2 "MDPD" shall mean the Miami-Dade Police Department.

1.3 "PEN-LINK LTD." or the "Licensor" shall mean the proprietary owner of the software.

1.4 "Project Manager" to mean the County's representative with the authority to make decisions in regards to this Agreement and will be accessible per Article 17 of the Agreement.

1.5 "Software" shall mean the existing licensed User Intercepts and Channel software that supports the Systems as outlined in the Scope of Services (Appendix A)..

1.6 "Maintenance and "Work and Services" and "Support Services" shall mean the product support required for the County to achieve optimal performance of the software pursuant to the terms outlined in the Scope of Services (Appendix A).

1.8 "PEN-LINK ® LINCOLN System" or "System" shall mean the telephone surveillance System that provides MDPD with the latest telecommunication technology and the ability to collect critical evidence and record intercepted communication through the following type of systems: wired, wireless, Voice Over Internet Protocol (VoIP), third generation mobile technology (3G) and Internet Protocol (IP).

**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) Scope of Services (Appendix A), and 3) Price Schedule (Appendix B), and any associated addenda and attachments thereof.



**ARTICLE 3. GRANT OF RIGHTS**

3.1 License. The License granted by the Licensor for the PEN-LINK ® LINCOLN System authorizes the County on a non-exclusive basis to use the Software on Designated County Equipment.

3.2 Additional Licenses. During the term of the Agreement, should the County wish to purchase additional licenses from the Licensor, the applicable fees shall be according to Appendix B "Price Schedule". All additional licenses purchased shall be documented in writing by the Licensor and incorporated into this agreement.

**ARTICLE 4. 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) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- c) 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 5. 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 Licensor shall provide the services set forth in Appendix A "Scope of Services", and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Licensor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Maintenance and Support 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 Licensor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Licensor 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 and conform to the Scope of Services outlined in Appendix A.
- e) The Licensor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Licensor agrees to provide input on policy issues in the form of recommendations, but reserves the right to decline the implementation of any and all changes should they be deemed unreasonable by the Licensor. Additionally, the Licensor agrees



to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County Provided that said mutually agreed upon changes are within the Scope of Services and/or any and all additional costs associated with such changes are borne by the County. The Licensor 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 6 AGREEMENT TERM**

6.1 The Agreement shall become effective on the date that it is signed by the County or the Licensor, whichever is later and shall continue through the last day of the 48<sup>th</sup> month following the month in which it is executed. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for two (2) two (2) year periods.

6.2 Extension. The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals.

6.3 Notification. The County will notify the Licensor in writing of the extension. This Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Licensor, upon approval by the Board of County Commissioners.

**ARTICLE 7. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- a) In those situations where this Agreement imposes an indemnity obligation on the Licensor, 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 Licensor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Licensor.

**ARTICLE 8. NOTICES**

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 Project Manager:**

Miami-Dade Police Department  
9105 N.W. 25 Street #3049  
Doral, Florida 33172



Phone: (305) 471-2596  
Fax: (305) 471-2996  
Email: [lromano@mdpd.com](mailto:lromano@mdpd.com)

Attention: Laura Romano

**(2) and to the Agreement Manager:**

Miami-Dade County  
Internal Services Department  
Procurement Management Division  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Phone: (305) 375-5215  
Fax: (305) 375-5688  
E-Mail: [ramosmi@miamidade.gov](mailto:ramosmi@miamidade.gov)

Attention: Mike Ramos

**(3) To the Licensor**

PEN-LINK LTD.  
5936 VanDervoort Drive  
Lincoln, NE 68516 | USA

Phone: (402).421.8857  
Cell: (402).202.9546  
Fax: (402).421.9287  
E-Mail: [ssorensen@penlink.com](mailto:ssorensen@penlink.com)

Attention: Shelley Sorensen, Territory Sales Manager

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 9. SUPPORT AND MAINTENANCE SERVICES**

9.1 Licensor Obligations. Licensor shall provide the County with the following support and maintenance services for the products licensed by the County:

- a) Help Desk technical support.
- b) Provision of available minor updates (bundling of several error corrections in one version) for download via the Internet or shipped on digital media.
- c) Provision of available medium upgrades (version with additional / enhanced functions) for download via the Internet or shipped on digital media.
- d) Provision of available major upgrades (version with substantially enhanced volume of functions).



- e) Factory authorized repair services to be performed by Licensor.
- f) If System does not work or on-site emergency repairs are required to be performed by Licensor in Licensor's sole discretion, Licensor shall be on-site within eight (8) hours of County's request.

9.2 E-Mail and Telephone Support. For the term of this Agreement, Licensor shall provide e-mail and telephone support in the following manner: Queries for specific technical problems and failures are possible at any time. For this purpose, the County will generally leave a message indicating the exact problem description and a classification in the following priority and error levels:

- a) Level A: System does not work.
- b) Level B: System works with limited functions.
- c) Level C: System basically working. Just errors/problems with specific functions.

Licensor ensures the following response times (via phone or e-mail) to the County:

- a) Level A: Response within the one hour of notification (Twenty-four (24) hours a day, seven (7) days a week).
- b) Level B: Response within twenty-four hours or less (Monday - Friday, 8 a.m. until 5 p.m. local time).
- c) Level C: Response within the next working (Monday - Friday, 8a.m. until 5 p.m. local time).

9.3 Subject Matter of Support Services. The subject matter of support services in clauses 9.1 and 9.2 above is the help with software maintenance, updates, upgrades, and support for user intercepts and channel licenses for the System.

9.4 Payments. Any and all support and maintenance services under this Agreement shall be compensated for by means of an annual flat rate. The fees are due for payment annually in advance upon invoicing by Licensor as set forth in Appendix B "Price Schedule".

## **ARTICLE 10. PROTECTION OF SOFTWARE**

10.1 Proprietary Information. The Licensor acknowledges that all computer software in the County's possession may contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use.

10.2 Proprietary Rights. The Licensor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all data and copies thereof furnished by the County to the Licensor hereunder, including all copyright and other proprietary rights therein, exclusive of Licensor's proprietary rights, which the Licensor as well as its employees, agents, subconsultants and suppliers may use only in connection of the performance of Services under this Agreement.

10.3 No Reverse Engineering. The County agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.

## **ARTICLE 11. SOFTWARE MODIFICATIONS**

11.1 Error Corrections and Updates. The Licensor will provide the County with error corrections, bug fixes, patches or other updates to the Software licensed hereunder to the extent available in accordance with the Licensor's release schedule for the term of this Agreement.



11.2 Enhancements or Modifications. Enhancement means any standard modifications or additions that, when made or added to the Software, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Licensor may designate Enhancements as standard or major, depending on its assessment of their value and of the functionality added to the Software.

11.3 Modifications or Customizations. The Licensor offers modifications or customizations of the Software for specific in-house requirements to its customers. The Licensor shall provide such customization services at the rates set forth in Appendix B "Price Schedule".

11.4 Title to Modifications. All such error corrections, bug fixes, patches, updates or new releases shall be the sole property of the Licensor.

**ARTICLE 12. MANNER OF PERFORMANCE**

12.1 The Licensor 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 Licensor in all aspects of the Services. The Licensor 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 Licensor agrees to adjust its personnel staffing levels or to replace any of its personnel, including subcontractors employees, 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. The Licensor agrees that such removal of any of its employees, including subcontractors, does not require the termination or demotion of any employee or subcontractor by the Licensor.

12.2 The Licensor 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 Licensor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Licensor's personnel as used in this Article shall not require the termination and or demotion of such Licensor's personnel.

12.3 The Licensor 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.

12.4 The Licensor 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.

12.5 The Licensor 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 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Licensor is, and shall be, in the performance of all work services and activities under this Agreement, an independent Licensor, 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 Licensor's sole direction, supervision and control. The Licensor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Licensor 's relationship and the relationship of its employees to the



County shall be that of an independent Licensor and not as employees and agents of the County.

The Licensor 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. MAINTENANCE SUPPORT FEES AND PAYMENT**

14.1 Maintenance Support Fees. The County shall pay the Maintenance Support Fees or other consideration for the annual on-site inspections, and enhanced training available from the Licensor as set forth on Appendix B "Price Schedule" attached hereto. All amounts payable for maintenance support services hereunder by the County shall be payable on an annual basis. The County shall have no obligation to pay the Licensor any additional sum in excess of this amount, except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Licensor. All Services undertaken by the Licensor before County's approval of this Agreement shall be at the Licensor's risk and expense.

14.2 Travel. With respect to travel costs and travel related expenses, the Licensor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

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

14.4 Invoices. All invoices issued by the Licensor, shall be supported by receipt bills or other documents reasonably required by the County. Invoices shall show the County's Agreement number, and shall have a unique invoice number assigned by the Licensor. It is the policy of Miami-Dade County that payment for all purchases by County agencies 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 shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County 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.

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

Miami-Dade Police Department  
9105 NW 25<sup>TH</sup> Street, Room 3049  
Doral, FL 33172

Attn: Accounts Payable

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



**ARTICLE 15. STATEMENT OF WORK**

Prior to the commencement of Services for any new Project, the County and the Licensor shall mutually agree upon the terms and conditions required to complete a Statement of Work for the specific Project that shall define in detail the Services to be performed. After the SOW has been accepted, a detailed requirements and design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement.

**ARTICLE 16. ADDITIONAL HARDWARE, SOFTWARE, MAINTENANCE AND SUPPORT SERVICES**

During the Term of this Contract, the County may order additional Hardware, Software, Maintenance and Support Services provided they are available. Each order must refer to this Contract and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Contract will govern the purchase and sale of the additional Hardware, Software, Maintenance and Support Services.

**ARTICLE 17. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

- a) The Licensor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Licensor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Licensor 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 Licensor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Licensor and the Project Manager are unable to resolve their difference, the Licensor 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.

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 Licensor's performance 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 Licensor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Licensor. Except as such remedies may be limited or waived elsewhere in the Agreement, Licensor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

**ARTICLE 18. EMPLOYEES ARE THE RESPONSIBILITY OF THE LICENSOR**

All employees of the Licensor shall be considered to be, at all times, employees of the Licensor under its sole direction and not employees or agents of the County. The Licensor shall supply competent employees. Miami-Dade County may require the Licensor 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 19. SUBCONTRACTUAL RELATIONS**

- a) If the Licensor 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 Licensor; and the Licensor 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 Licensor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Licensor.
- b) The Licensor, 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 Licensor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Licensor 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 Licensor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Licensor shall furnish to the County copies of all subcontracts between Licensor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract and in the event the County finds the Licensor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

## **ARTICLE 20. CONFIDENTIALITY**

20.1 As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law, Section 119 of the Florida Statutes. Notwithstanding anything else in this Article to the contrary, the County's compliance with, or good faith attempt to comply with the requirements of Chapter 119 of Florida Statute shall not be considered breach of this Agreement.

20.2 Acknowledgement. County hereby acknowledges and agrees that the Software constitutes and contains proprietary products and trade secrets of the Licensor embodying creative efforts and confidential information, ideas, and expressions. Accordingly, the County agrees to treat (and take precautions to ensure that its employees treat) the Software as confidential in accordance with the confidentiality requirements and conditions set forth below.

- a) All data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement or 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 Licensor or its employees, agents, subconsultants or suppliers for any purpose other than for the benefit of the County, unless required by law. No service provided by the Licensor shall be deemed to be "work for hire" nor shall such service (including the installation of any Licensor software or product) change the proprietary rights of Licensor.
- b) 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 Licensor nor its employees, agents, subconsultants or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Licensor 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. The indemnification in the last sentence of this subsection must be for only the breach by Licensor.

20.3 Maintenance of Confidential Information. The Licensor shall advise each of its employees, agents, subconsultants 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 subconsultants or supplier's employees, present or former. In addition, the Licensor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.



20.4 Injunctive Relief. 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 and Licensor may be entitled to injunctive relief to restrain any such breach or threatened breach.

20.5 Survival. Each party's obligations under this Article 20 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

**ARTICLE 21. INDEMNIFICATION AND INSURANCE**

Licensor 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 Licensor or its employees, agents, servants, partners principals or subcontractors. Licensor 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. Licensor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Licensor 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 Licensor shall furnish to the Vendor Assistance Section, Internal Services Department, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Licensor 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.

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

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by 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 and are members of the Florida Guaranty Fund.



Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**NOTE: MIAMI DADE COUNTY BID NUMBER AND TITLE OF BID MUST APPEAR ON EACH CERTIFICATE.**

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

Compliance with the foregoing requirements shall not relieve the Licensor of his liability and obligation under this section or under any other section of this agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Licensor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Licensor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Licensor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Licensor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Licensor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Licensor 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 22. LIMITATION OF LIABILITY**

COUNTY ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH THE LICENSOR IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION OF THE RISK OF THE COUNTY'S CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH COUNTY'S USE OF THE DESIGNATED EQUIPMENT, SOFTWARE, AND DOCUMENTATION. THEREFORE IN NO INSTANCE WILL LICENSOR OR LICENSOR BE LIABLE FOR CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES.

**ARTICLE 23. DEFAULT AND TERMINATION**

23.1 Termination. The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its obligations under this Agreement with the County through fraud, misrepresentation or material misstatement.

- a) The County may, as a further sanction, terminate or cancel any other Agreement(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.

- b) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its obligations with the County under this Agreement 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 Licensor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

23.2 Termination for Convenience. 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 Licensor and in such event:

The Licensor 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) take no action which will increase the amounts payable by the County under this Agreement; and

- a) In the event that the County exercises its right to terminate this Agreement pursuant to this Article
- b) the Licensor will be compensated as stated in the payment Articles, herein, for the portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- b) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Licensor will reimburse the County a proration of the fees paid annually based on the remaining months of the term as per the compensation listed in Appendix B- Price Schedule.
- c) All compensation pursuant to this Article are subject to audit.

23.3 Events of Default. This Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Article 20 (Confidentiality) or makes an assignment in violation of Article 32 (Nonassignability); (3) if the Licensor becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors. If an event of default occurs, the Licensor's liability is limited to Article 22 (Limitation of Liability).

23.4 Effective Date of Termination. Termination due to a material breach of Articles 20 (Confidentiality), or 10 (Protection of Software) shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

#### **ARTICLE 24. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST**

##### **a) Vendor Registration**

The Licensor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Licensor 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 Licensor'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 Licensor'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/Licensor 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 Licensor 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 as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this Agreement, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-



2593.

**ARTICLE 25. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Licensor 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 Licensor 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 26. 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 Licensor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Licensor 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 Licensor 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 27. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Licensor. 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 Licensor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
  - ii. the Licensor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iii. the Licensor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Licensor 's creditors, or the Licensor has taken advantage of any insolvency statute or debtor/creditor law or if the Licensor 's affairs have been put in the hands of a receiver;
  - iv. the Licensor has failed to obtain the approval of the County where required by this Agreement;
  - v. the Licensor has failed in the representation of any warranties stated herein.

**ARTICLE 28. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs, in the determination of the County, the County may so notify the Licensor ("Default Notice"), specifying the basis for such default, and advising the Licensor 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 Licensor to rectify the default to the County's reasonable satisfaction within a ten (10) 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 Licensor has commenced curing such default and is effectuating a cure with diligence and continuity during such ten (10) day period or any other period which the County prescribes. The default notice shall specify the date the Licensor shall discontinue the Services upon the Termination Date.

#### **ARTICLE 29. INSPECTOR GENERAL REVIEWS**

29.1 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 Licensor 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 Licensor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Licensor, its officers, agents, employees, subconsultants and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Licensor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Licensor or any third party.

29.2 Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County Agreements, throughout the duration of said Agreements, except as otherwise provided below. The cost of the audit for this Agreement shall be one quarter (1/4) of one (1) percent of the total Agreement amount which cost shall be included in the total Agreement amount. The audit cost will be deducted by the County from progress payments to the Licensor. The audit cost shall also be included in all change orders and all Agreement renewals and extensions.

29.3 Exception. The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following Agreements: (a) IPSIG Agreements; (b) Agreements for legal services; (c) Agreements for financial advisory services; (d) auditing Agreements; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance Agreements; (h) revenue-generating Agreements; (i) Agreements where an IPSIG is assigned at the time the Agreement is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted Agreement at the time of award

29.4 Inspector General Powers. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County Agreements including, but not limited to, those Agreements specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust Agreements, 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 Agreement. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Licensor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with Agreement specifications and to detect fraud and corruption.

- a) Upon written notice to the Licensor from the Inspector General or IPSIG retained by the Inspector General, the Licensor 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 Licensor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Agreement, 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 Agreement 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 30. COUNTY USER ACCESS PROGRAM (UAP)**

30.1 User Access Fee. Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Agreement 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 Agreement, or any Agreement resulting from this solicitation and the utilization of the County Agreement price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Agreement usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

30.2 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 Agreement pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Licensor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Licensor participation in this joint purchase portion of the UAP, however, is voluntary. The Licensor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Licensor 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 Licensor 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 Licensor and shall be paid by the ordering entity less the 2% UAP.

30.3 Licensor Compliance. If a Licensor fails to comply with this Article, that Licensor may be considered in default by the County in accordance with this Agreement.

**ARTICLE 31. SEVERABILITY**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**ARTICLE 32. NONASSIGNABILITY**

Licensor shall not assign this Agreement or its rights hereunder without the prior written consent of the County.

**ARTICLE 33. GOVERNING LAW**

This Agreement, 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 34. ANNUAL APPROPRIATION**

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, except as to the portions of payments agreed upon and for which funds have been appropriated and budgeted. Service/Maintenance can be cancelled at any time that the Licensor is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Licensor for canceling service/maintenance during the year.

**THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK**



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

LICENSOR

MIAMI-DADE COUNTY

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Corporate Secretary

Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney



## **APPENDIX A - SCOPE OF SERVICES**

# **MAINTENANCE AND SUPPORT FOR MIAMI-DADE POLICE DEPARTMENT**



## APPENDIX A – SCOPE OF SERVICES

The telephone surveillance System provides MDPD with the latest telecommunication technology and the ability to collect critical evidence and record intercepted communication through the following type of Systems; wired, wireless, Voice Over Internet Protocol (VOIP), third generation mobile technology (3G) and internet Protocol (IP).

Licensor will provide software maintenance, updates, upgrades, and support to maintain the operational needs of the System as authorized by the County's Project Manger or designee.

Currently the County has rights of use for 15 User Intercepts and 12 Channel licenses for the PEN-LINK ® LINCOLN System (System).

### A. Premium Technical Support (also "Premium Support") includes:

- 1) Telephone-based Technical Support
- 2) Main telephone number (currently 402-421-8857)
- 3) Assistance via email or other automated processes
- 4) General support email account (support@penlink.com),
- 5) World Wide Web site (www.penlink.com)
- 6) Emergency After-Hours support for live communication interception and collection operations.
- 7) Emergency After-Hours support services may be accessed through methods, including telephone access, that are provided to the customer at the time of purchase.
- 8) Emergency After-Hours support services are available Monday through Friday, from 5:01 PM - 7:59 AM Central time and all day Saturday & Sunday, including holidays.

**B. Premium Maintenance and Support.** Premium Maintenance includes Software Updates, Software Upgrades, and Premium Technical Support as defined herein.

**C. Software Update.** A Software Update is an enhancement—including additions, changes, and bug fixes—to Pen-Link Software. Software Updates occur within the same major version number of an existing software product. For example, replacing Pen-Link v8.1.29.0 with Pen-Link v8.1.30.0 would constitute a Software Update. Such an update is often referred to as a "New Build" of the Pen-Link Software.

**D. Software Upgrade.** A Software Upgrade is the replacement of an older major version of an existing Pen-Link Software product or products, with a newer major version of a Pen-Link Software product or products, to the extent required to maintain the same operational functionality that was supported by the Pen-Link Software prior to the upgrade. For example, upgrading from Pen-Link Version 7 to Pen-Link Version 8 (where 8 is the newer major version) would constitute a Software Upgrade, so long as the installation of the newer version of the Pen-Link Software supported at least the same operational functionality that the Customer had under Pen-Link version 7. Upgrades do **not** apply to *new* software products that Pen-Link, Ltd. may release to the commercial market from time to time in the future.

E. In the event that the County wishes to expand the PEN-LINK ® LINCOLN System pursuant to this Agreement with respect to any future System addition(s), the County and Pen-link shall execute an addendum to this Agreement and upon execution of such Addendum by both the County and Pen-Link, such System addition(s) shall be pursuant to the terms of this Agreement.



## APPENDIX B - PRICE SCHEDULE



APPENDIX B – PRICE SCHEDULE

**A. SOFTWARE MAINTENANCE AND SUPPORT SERVICE FEES**

Description	Annual Maintenance Fee
Software Maintenance and Support Services 2015 - 2019	\$210,500
<b>Total for the Initial Four Year Term:</b>	<b>\$210,500</b>

**B. OPTIONAL YEARS TO RENEW (OTR) FEE SCHEDULE**

DESCRIPTION	Annual Maintenance Fee
OTR 1 - Software Maintenance and Support Services (2019-2021)	\$105,250
OTR 2 - Software Maintenance and Support Services (2021-2023)	\$105,250
<b>Total for all Optional-Years-To Renew:</b>	<b>\$210,500</b>

**C. OPTIONAL ITEMS**

- i. Throughout the term of the contract should the County wish to purchase additional licenses the following price shall prevail:

NO.	Additional Licenses	
1	Additional Individual Licenses - User Intercept	\$7,000 Each
2	Additional Individual Licenses - Channel	\$6,750 Each

Currently the County has rights of use for 15 User Intercepts and 12 Channel licenses for the PEN-LINK ® LINCOLN System (System).

- ii. During the term of the contract should the County wish to purchase optional hardware, software, and support services to expand the System the following prices shall prevail:

QTY.	DESCRIPTION	Unit Price	Extended Price
1	Penlink Server	\$8,645.16	\$8,645.16



1	Point Software Server Mid-Range	\$8,750.76	\$8,750.76
1	Lincoln Recording Server	\$8,645.16	\$8,645.16
1	Active Directory Server	\$7,993.41	\$7,993.41
1	Dialogic 12 Port Analog	\$3,110.00	\$3,110.00
1	Tripplite 17" KVM/KMM	\$1,630.24	\$1,630.24
4	Tripplite KVM Cable	\$41.68	\$166.72
1	Dell Powerconnect 24 Port GB Switch	\$1,086.24	\$1,086.24
1	Cabling (100ft, CAT6, Engineering time included)	\$312.50	\$312.50
2	Cisco VPN Router 5505 Package, 25 Tunnels	\$2,490.75	\$4,981.50
15	Windows Server Device Cal	\$25.58	\$383.70
1	Prostor 1TB Cartridge	\$372.99	\$372.99
1	Prostor Single Drive W/ 1 Year Support	\$286.25	\$286.25
30	Panasonic BDR 50 GB	\$8.04	\$241.20
1	Buffalo Media Station External Blu Ray Writer	\$222.10	\$222.10
1	Disc 30 Slot Jukebox Package	\$20,262.69	\$20,162.69
4	Netop Host	\$64.76	\$259.04
1	Installation	\$10,000.00	\$10,000.00
1	Microsoft Outlook	\$69.24	\$69.24
19	Symantec End Point Protection – Anti Virus	\$74.21	\$1,409.99

The hardware unit prices may increase or decrease by %5, depending on market conditions or as a result of negotiations.

iii. During the Optional Years to Renew, should the County wish to engage the Licensor in performing optional support services, the following rates shall apply:

Personnel Description	Hourly Rate
Service Fee	\$125.00

This does not include chargeable travel expenses. With respect to travel costs and travel related expenses please refer to Article 14.2.

**Justification/Input Document for "Sole Source" Acquisition**  
**Title: Telephone Surveillance System**

ITB #

It is the policy of Miami-Dade County, to consistently purchase goods and services using full and open competition. The citizens of Miami-Dade County are best served when we make sound business decisions based on competitive bids or proposals. Early acquisition, planning that includes DPM can help to avoid delays and to facilitate effective market research. However, there may be instances when other than full and open competition may be justified. When a user department(s) has determined that there is only one source of supply for a product or service, appropriate justification for that course of action must be submitted to the CA Office for approval in order to waive the competitive bid/proposal process, as a sole source purchase.

Please provide the information requested below to support the need and feasibility for waiving the competitive bid/proposal process.

Purchase Requisition No.: N/A Contract # SS9152-0/11 Date Required: 02/15/2012 Est. Value: \$ 52,625.00

Proposed Vendor: Ben-Link LTD (470707585-01) Previous Contract # SS9152-0/11 Estimated Cost: \$ 52,625.00 Commodity # 680-87

BCC Date: N/A

See Attached

[Redacted]

See Attached

[Redacted]

See Attached

[Redacted]

See Attached

[Redacted]

Laura Romano 305-471-2586  
 Contact Person and Phone

James K. Loftus  
 Department Director's Approval

11-9-11  
 Date Approved

FAB 8561



## Renewal of PEN-LINK ® LINCOLN system maintenance agreement

### **Purpose of Purchase:**

To renew the PEN-LINK ® LINCOLN system maintenance agreement for the initial system purchased by the Miami-Dade Police Department.

In 2003, the Miami-Dade Police Department's, Homeland Security Bureau's Technical Operations Unit purchased the initial (6) channel, 10-user LINCOLN system which included three years of system maintenance (PO #APPD0300060.) In 2006, this system was expanded with the additional purchase of a (12) channel 15 user system. These PEN-LINK ® systems are currently installed and utilized in the Department's Headquarters building wire room. The maintenance period for the initial (6) channel, 10-user system is due to expire December 1, 2011.

The Homeland Security Bureau's Technical Operations Unit has historically been the departmental entity responsible for the coordination, operation and supervision of telephone surveillance ranging from the collection of telephone number data via the use of dialed number recorders to Title III, oral communications intercepts.

The PEN-LINK ® LINCOLN system provides telephone intercept surveillance in support of major investigations being conducted by the Criminal Investigations Division and the Department. Additionally, these systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.

### **Uniqueness of Vendor's Item/Service:**

The proposed PEN-LINK ® system maintenance agreement would allow for the continued ability of providing criminal investigators with crucial evidence collected through telephone line intercept surveillance. The maintenance agreement will insure that the currently installed systems stay up to date with newly developed engineering and software upgrades that are produced to stay current with many newly developed telecommunication technologies such as Voiceover IP and Broadband IP services on 3G phones. These proprietary engineering and software developments are required to maintain the functionality of the system and to ensure continued compliance with the Communications Assistance for Law Enforcement Act (CALEA.)

### **Market Research:**

PEN-LINK, Ltd. is the sole source provider of the LINCOLN system. The company utilizes no agents, dealers, or distributors. PEN-LINK ® LINCOLN system maintenance can only be purchased directly from PEN-LINK, Ltd., which is located in Lincoln Nebraska. PEN-LINK, Ltd. is currently an active Miami-Dade County Vendor, number: 470707585.

### **Proposed Actions:**

The proprietary nature of this purchase necessitates the acquisition from a specific vendor.

## Non-Competitive IT Project Review on Competitive IT Project Review on Competitive

**Directions for Completion:** Departments requesting a non-competitive project review for existing information technology (IT) systems are required to complete this questionnaire along with the appropriate Bid Waiver/Sole Source Justification Form. The response and explanation fields are to be fully completed to provide all background on the project. Please be as specific as possible and provide all backup documentation, doing so will expedite the review of your project.

The answers provided in the response field shall be according to the following format:

- "Y" – Yes
- "N" – No
- "N/A" – Not applicable

Existing Systems Questions	Response	Explanation
<b>Current Contract Information:</b>		
When and how was the IT software/hardware initially purchased by the County? (Please provide contract number, award info, and applicable documentation)	Y	The software along with the hardware was purchased back in 2003 / 2006.
When does the current contract expire?	Y	Soon
If the contract has expired, how are/have you been maintaining the IT hardware/software? (Provide explanation and documentation if applicable)	N/A	
Was maintenance and support included in the current contract? If no, why not? Did it include assistance with transition to a new system?	Y	Yes. Support was built into the contract
What other applications does the System integrate/interface with?	N	Independent from the county network reference security. Runs on its own internal network using VPN tunnels.

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<p>If a new system were deployed would it still be necessary to support the current system in parallel? How long would the legacy system need to be maintained and operational? Could historical data be stored in a data warehouse? What would be the cost?</p>	<p>N/A</p>	
<p>What is the purpose of this IT hardware /software? What is the expected life cycle?</p>	<p>Y</p>	<p>To allow for the continued ability of providing criminal investigators with crucial evidence collected through telephone line intercept surveillance</p>
<p>Is this product an integral part of the County / Department's technical infrastructure? Does it perform system critical functions? If so, what?</p>	<p>N/A</p>	
<p>Are these solutions delivered through the Original Equipment Manufacturer (OEM) support? If no, is it delivered through authorized reseller or dealers?</p>	<p>Y</p>	<p>As part of the service agreement all software is kept up to date by Penlink Limited.</p>
<p>On the current contract, is the User Access Program (UAP) and Inspector General being collected?</p>	<p>N/A</p>	
<p>Does the current contract require insurance? <i>(Note: Any vendor required to come onto County property is required to have insurance throughout the term of the Agreement.)</i></p>	<p>N</p>	
<p>Have you encountered any issues during the contract term regarding performance or compliance?</p>	<p>N</p>	
<p>Have you been satisfied with the performance of the vendor to date?</p>	<p>Y</p>	<p>Penlink has provided the assistance need to complete the job on a timely mater 2/4/7</p>

**Non-Competitive Project Review**

Market Research:	Response	Explanation
<p>Are there available equivalents to the product or service you are requesting for this new project? (Please provide documentation regarding your Department's market research)</p>	Y	<p>PEN-LINK, Ltd. is the sole source provider of the LINCOLN system. The company utilizes no agents, dealers, or distributors. PEN-LINK @ LINCOLN system maintenance can only be purchased directly from PEN LINK, Ltd, which is located in Lincoln Nebraska. PEN LINK, Ltd. is currently an active Miami-Dade County Vendor, number: 470707585.</p>
<p>If there are available equivalents, why do these products not meet your needs? What are the differences? (Please be as specific as possible to provide sufficient detail to justify your request.)</p>	Y	<p>Re-investing large sums of money to redo what is in currently in place. (Not cost effective)</p>
<p>Can the vendor meet your long term needs? What research has been conducted to verify their ability to meet your expectation? (Please provide documentation, as applicable, to show your findings)</p>	Y	<p>The company was founded in 1987 we have been doing business with Penlink since 2003. Recently they have built on to their product line X-Net, PLM and Pen-Proxy as part of our service agreement we will receive the new products.</p>
<p>What other vendors offer systems capable of providing the County with a solution?</p>	Y	<p>JSI, <a href="https://www.isitelecom.com/">https://www.isitelecom.com/</a></p>
<p>Are these solutions delivered through the Original Equipment Manufacturer (OEM) support or is it delivered through authorized reseller or dealers.</p>	Y	<p>Original Equipment Manufacture</p>

**Non-Competitive IT Project Review on Competitive IT Project Review Changes**

Questions	Response	Explanation
<p>Are dealers required to complete a certification program or are they restricted to levels of support set up by the vendor/mfg? <i>(i.e. gold plan vs. platinum plan – gold allows vendor to maintain equipment but they do not have access to software upgrades or new system implementations. Platinum allows vendors to complete new product installs and all other support).</i></p>	N/A	
<p>What level support does the County require for this new project?</p>	Y	Network connection
<p>Are there other systems currently employed by the department / County that are similar that could provide a solution?</p>	N	
<p>If a new system were deployed would it still be necessary to support the current system in parallel?</p>	Y	No Need
<p>How long would the legacy system need to be maintained and operational?</p>	Y	Indefinite Service agreement
<p>Could historical data be stored in a data warehouse? What would be the cost?</p>	N/A	

**Non-Competitive IT Project Review**

QUESTIONS	RESPONSE	EXPLANATION
<p>Has the replacement system been reviewed and approved by the IT Leadership Council?</p>	N/A	
<p>What are the business goals and objectives of this new project? (Please be specific)</p>	Y	<p>The maintenance agreement will insure that the currently installed systems stay up to date with newly developed engineering and software upgrades that are produced to stay current with many newly developed telecommunication technologies such as Voiceover IP and Broadband IP services on 3G phones. These proprietary engineering and software developments are required to maintain the functionality of the system and to ensure continued compliance with the Communications Assistance for Law Enforcement Act (CALEA)</p>
<p>What contract term would you like established? (Initial term plus any renewals)</p>	Y	
<p>What allocation is requested on this new project? What is the basis of the allocation request? (i.e. Vendor quote, market research, etc.)</p>	Y	<p>Vendor quote</p>
<p>Please provide documentation if applicable.</p>	N	
<p>What is your funding source(s) for this new project?</p>	N/A	
<p>Is this a grant funded project? If so, please provide grant documentation outlining the expiration date and requirements.</p>	N/A	

**Non-Competitive IT Project Review**

<p>What budget year is it scheduled for?</p>		
<p>Is the allocation enterprise or department based?</p>	<p>N/A</p>	
<p><b>Supplementation</b></p>		
<p>Please provide a high level overview as to the scope of this project. A defined scope of work is to be provided with your submission.</p>	<p>Y</p>	<p>The PEN-LINK @ LINCOLN system provides telephone intercept surveillance in support of major investigations being conducted by the Criminal Investigations Division and the Department. Additionally, these systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.</p>
<p>What is your Project Timeline?</p>	<p>Y</p>	<p>ASAP</p>
<p>What are the roles and responsibilities of the vendor?</p>	<p>Y</p>	<p>To provide 24/7 real-time support and software upgrades to the Penlink System</p>
<p>What are the roles and responsibilities of the County?</p>	<p>Y</p>	<p>To provide 24/7 real-time assistance to the Investigators wishing to go up on a Title III or PenRegister for tracking.</p>
<p><b>Software Acquisitions</b></p>		
<p>Is this a replacement of an existing software/system?</p>	<p>N/A</p>	
<p><b>Questions</b></p>		
<p>Is the software perpetual? If so, please provide a copy of the license agreement with your submission.</p>	<p>N/A</p>	
<p>Do you require professional services on the new contract? (i.e. Training, custom programming, consulting)</p>	<p>N/A</p>	

**Non-Competitive IT Project Review**

How is the software licensed? (i.e. Per User, Enterprise, Concurrent User, Site)	Y	Per User
How many users?	Y	15
Do you want/need the new contract to provide the option to purchase additional licenses or services during the term?	Y	
Do you require training for users on the new contract? How many users are to be trained? Levels?	Y	4 new users
Where is the software hosted?	Y	Miami Dade Police Department (Cold Room)
Do you have a disaster recovery plan? If no, is the vendor required to provide collocation under the new contract?	Y	Backup The Homeland Security Bureau's Technical Operation Unit has historically been the departmental entity responsible for the coordination, operation and supervision of telephone surveillance ranging from the collection of telephone number data via the use of dialer number recorders to Title III, oral communication intercepts.
What are your long term plans with the system?	Y	The PEN-LINK @ LINCOLN system provides telephone intercept surveillance in support of major investigations being conducted by the Criminal Investigations Division and the Department. Additionally, these systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.
Do you have the source code?	N	

**Non-Competitive IT Project Review on Competitive IT Project Review of Service**

Questions	Response	Explanation
Would you like software escrow added to the new software escrow contract?	Y	Service Agreement (Up to Date)
What is the life expectancy of the software? What value does this project provide to your department?	Y	
Was maintenance and support included in the original contract? If not, why?	Y	
Did it include assistance with transition to a new system?	Y	
Is this product an integral part of the County / Department's technical infrastructure?	N	
What are the requirements for maintenance and support under the new contract?	Y	Network connection
Will the vendor be required to come onto County property to provide technical support/assistance? If not, how will this be accomplished?	Y	As needed by County
What level of support is required by your Department under the new contract? (I.e. 24x7, onsite repair, parts, etc.)	N/A	
Does it perform system critical functions? If so, what?	N	
What would be the effect to the County if the maintenance / support services were not obtained?	Y	With time Cell Phone Technology would leave us behind and the system would become obsolete.

**Non-Competitive IT Project Review and Competitive IT Project Review**

Questions	Responses	Explanation
What other systems does the hardware integrate/interface with?	N/A	
Will the new contract require the vendor to maintain these integrations/interfaces with these systems also?	N/A	
What is the life expectancy of the hardware?	N/A	
What value does this project provide to your department?  Do you need to have the ability in the new contract to purchase additional hardware components, parts, or services?  If so, please provide a detailed explanation as to your Department's requirements.	Y	These systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.
	N/A	