

SunPass/Toll-By-Plate Electronic Tolling Solution

THIS SOFTWARE LICENSE, EQUIPMENT, IMPLEMENTATION, INTEGRATION, 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 TRANSCORE LP, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, HAVING ITS PRINCIPAL OFFICE AT 8158 ADAMS DRIVE, HUMMELSTOWN, PENNSYLVANIA, 17036 (HEREINAFTER REFERRED TO AS THE "CONTRACTOR").

WITNESSETH:

WHEREAS, the Contractor has submitted a written proposal dated March 7, 2013, 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 SunPass/Toll-By-Plate Electronic Tolling Solution for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The word "Competitor" to mean any firm, company, or person providing services or equipment related to electronic toll collection systems or services or Open Road Tolling systems or Customer Service Center and/or Violation Processing System, having a financial interest in such firm, company, or person, including any employee, officer, consultant or agent of such firm, company, or person
- b) 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. 861 and all associated addenda, and the Contractor's Proposal.
- c) The words "Contract Date" to mean the date on which this Agreement is effective.
- d) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- e) The word "Contractor" to mean TransCore LP and its permitted successors and assigns.
- f) The words "County facility" to mean space, environment, and other facilities, provided by the County in connection with the use, operation, or maintenance of the Solution.
- g) The word "Days" to mean Calendar Days.
- h) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

- h) The word "Documentation" to mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to the County in connection with the Software.
- i) The words "Equipment" or "Devices" to mean the hardware products identified on Appendix A, "Scope of Services" to be provided by the Contractor to the County under this Agreement.
- j) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- k) The word "Maintenance" to mean the product updates and product upgrades required for the County to achieve optimal performance of the Software as outlined in Appendix A, "Scope of Services."
- l) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- m) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- n) The words "Software System" or "Software" to mean the computer programs in machine readable in both object code and source code and all data sets and auxiliary files used by such code, along within any media on which they reside listed in Appendix A, "Scope of Services" attached hereto and any subsequent error corrections or updates supplied to the County by the Contractor pursuant to this Agreement, together with the proprietary information and trade secrets contained therein. Appendix A, "Scope of Services" may be amended from time to time by the parties in writing.
- o) The word "Solution" to mean the Software System and Equipment as described in Appendix A, "Scope of Services."
- p) The words "Support Services" to mean the process to resolve reported incidents through error correction, patches, hot fixes, workarounds, replacements or any other type of correction or modification required to fully utilize the Software capabilities, as outlined in Appendix A, "Scope of Services."
- q) 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.
- r) 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) any appendixes or attachments thereto, including the resultant Detailed Design Document (DDD) 3) Contractor's Proposal 4) Miami-Dade County's RFP No. 861 and any associated addenda and attachments thereof.

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

5.1 The Agreement shall become effective on the date that is it is signed by the County or the Contractor, whichever is later and shall be for the duration of five (5) year(s). The County, at its sole discretion, reserves the right to exercise the option to renew this Agreement for an additional four (4) five-year periods.

5.2 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. The County will notify the Contractor 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 Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. GRANT OF LICENSE

6.1 License. The Software and related materials and any copies, excluding Developed Works as outlined in Article 6.3, in whole or in part made pursuant to this Agreement shall be the sole and exclusive property of the Contractor.

6.2 Contractor grants to the County, its successors and assigns, a limited, non-exclusive, royalty-free, fully paid, license to the Software for County's own operations on the Equipment, or approved future equipment; provided,

however, that County shall have the right to re-locate the Software to a backup CPU, in the event that the licensed CPU fails or is withdrawn from service. Contractor authorizes the County to copy the System Software solely for its own internal use. The County shall not re-sell, supply or give the Software (source or executable code) to other parties. Contractor hereby authorizes County to copy the Software solely for the County's own internal use for restart purposes or to replace worn copy, provided the Software is used only on the Equipment, or approved future equipment.

6.3 Notwithstanding the foregoing, and any other provision under this Agreement, the County grants the Contractor a perpetual, royalty-free, irrevocable, worldwide, unlimited, exclusive license to use, operate, copy, customize, modify, and create derivative works from Contractor enhancements or modifications or customization or Developed Works of software and source code developed specifically for the County under this Agreement for other legal business purposes. As part of the license rights granted, the County shall provide all necessary documentation and source code required by Contractor to use such software for Contractor's intended purpose.

6.4 Any purchased Commercial Off the Shelf (COTS) and/or third party providers (inclusive of subcontractors and suppliers) of software provided under this Agreement shall be in the name of the County, so that the County may be made the licensee of such software subject to the standard terms and conditions of the respective COTS or third party providers (inclusive of subcontractors and suppliers) license agreements. COTS and/or third party providers (inclusive of subcontractors and suppliers) software source code is excluded from any escrow deposit requirements.

ARTICLE 7. 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 Project Manager:

Miami-Dade Public Works and Waste Management Department
2525 NW 62nd Street
5th Floor
Miami, Florida 33147

Attention: Aneisha Daniel and Michael Bauman
Phone: (305) 514-6630 / (305) 854-2468
E-mail: adaniel@miamidadegov / mikeb@miamidadegov

and to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Beth Goldsmith
Phone: (305) 375- 4417
Fax: (305) 375- 5688
E-Mail: bgoldsm@miamidadegov

(2) To the Contractor

Transcore LP
9440 Carroll Park Drive
Suite 150
San Diego, CA 92121

Attention: Director of Contracts
Phone: (858)736-8270

E-mail: randy.lester@transcore.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 8. DELIVERY

8.1 Delivery of the Solution shall be according to Appendix A, "Scope of Services" and Appendix C, "Project Timeline". All services performed under this Agreement are contingent upon Final System Acceptance by the County.

8.2 Documentation. The Contractor shall provide electronic copies of the associated Solution Documentation Solution to the County upon Final System Acceptance.

ARTICLE 9. SUPPORT AND MAINTENANCE SERVICES

Contractor shall provide the County with technical support and maintenance services in the manner outlined in Appendix A, "Scope of Services" for the Solution throughout the term of this Agreement, including any options or extensions exercised by the County.

ARTICLE 10. PROTECTION OF SOFTWARE

10.1 No Reverse Engineering. The County agrees shall not reverse compile, reverse engineer, modify, disassemble, translate, copy or in any way duplicate the Software, in whole or in part.

10.2 Ownership. The County further acknowledges that all copies of the Software System in any form provided by the Contractor are the sole property of the Contractor. The County shall not have any right, title, or interest to any such Software or copies thereof, and further shall secure and protect all Software and Documentation consistent with maintenance of Contractor's proprietary rights therein. The County shall not sell, lease, assign, sublicense, or otherwise transfer to any third party, directly or indirectly, the Software or any license or right granted hereunder, in whole or in part.

10.3 Exporting. The County will not export or re-export outside the United States, the Software, in whole or in part.

10.4 The County shall reproduce and include copyright and proprietary notices on all copies of the Software in the same form and manner that such copyright and proprietary notices are included on the Software by Contractor.

ARTICLE 11. SOFTWARE MODIFICATIONS

11.1 Software Enhancements or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modifications into the Software. When requested by the County, the Contractor shall provide the requested system enhancements/modifications including all relevant source code. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. The Contractor shall submit a cost and/or temporary revenue sharing proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

a) After the SOW has been accepted a detailed requirements and detailed 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. Such enhancements or modifications shall become the property of the County. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.

b) Following the County's acceptance of all enhancements/modification, the Contractor shall provide the

County, if so requested with written confirmation of the date the enhancements/modification was applied to the Software System, and any and all Documentation relating to the Software and or enhancements/modification thereto.

ARTICLE 12. IMPLEMENTATION SERVICES

- a) The County shall accept or reject the Software System and/or Equipment within fifteen business (15) days of receipt unless otherwise provided elsewhere in this Agreement.
- b) If the Contractor fails to provide deliverables within the time specified or if the Software System and/or Equipment delivered fails to conform to the requirements or are found to be defective in material or workmanship, then the County may reject the delivered Software System and/or Equipment or may accept any item of Software System and/or Equipment and reject the balance of the delivered Software System and/or Equipment. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement for the Software System and/or Equipment for such items of rejected Software System and/or Equipment within fifteen (15) business days of Contractor's receipt of the County's rejection notice.
- c) The Contractor shall bear the risk of loss or damage to delivered Software System and/or Equipment until the time the Project Manager certifies that the System(s) has successfully completed the System Acceptance test whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor or the County or from any other cause whatsoever, except loss or damage arising solely from the negligence or willful acts of the County.
- d) Contractor agrees to install the Software System at the County's facilities. Contractor agrees to commence installation of the Software System according to the Implementation Timeline set for in Appendix C unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours. Whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services in accordance with the Implementation Schedule, so that such Software System is in good working order and ready for use by the dates set forth in the Implementation Timeline.
- e) Contractor agrees to do all things necessary for proper implementation of the Software System and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all work with all other Contractors and/or County personnel performing work to complete Software System installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the Software System. The County shall attempt to provide reasonable working and secure storage space for the performance by Contractor of the implementation services described herein.
- f) Unless otherwise agreed to by the County, Contractor agrees as part of the implementation to perform all required services to successfully achieve all objectives set forth in Appendix A, "Scope of Services", including, but not limited to, (a) system configuration; (b) interface development; (c) software testing; (d) acceptance and user acceptance testing; (e) training; (f) cooperating with all other vendors supplying peripheral or ancillary equipment that will interface with the System; and (g) any additional services necessary to ensure Contractor's compliance with this Article 12.
- g) Solution testing shall consist of the tests described in the Scope of Services which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the Solution in conformance with the requirements of the Contract. This will include an actual demonstration of all required Solution functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily

demonstrating and/or re-demonstrating system performance.

ARTICLE 13. TESTS

The Contractor shall configure and program the Solution to conform to the Scope of Services. The software and associated equipment will be subject to several tests, including a System Acceptance test as further defined in the Scope of Services, Implementation Timeline, and Acceptance Criteria to be developed and agreed by both parties. To assure Solution performance, the County's Project Manager will coordinate all testing of the Solution and provide Final System Acceptance upon completion of all milestones and deliverables as outlined in the Scope of Services.

Failure of the Solution to satisfy the acceptance criteria and conform to the requirements set forth in the Scope of Services by the timeframes set forth in the Implementation Timeline may result in the County withholding payment until satisfactory acceptance is granted to the Contractor.

After Final System Acceptance is granted, any modifications, fixes, enhancements, and/or new releases of the Solution require separate testing periods and sign-off from the County Project Manager prior to migrating it into the production software. The testing protocol shall be as follows:

- a) Contractor's Project Manager will provide written notice to the County Project Manager of modifications, fixes, enhancements, and/or new releases of the software available for testing.
- b) The Contractor's Project Manager will coordinate all user acceptance testing dates, acceptance criteria, and training for the new functionality for the test group.
- c) The County will be granted five (5) business days or other timeframe agreed to by both parties in writing to perform testing based on the outlined functionality being delivered to the County on the Acceptance Criteria sign off sheet;
- d) The County's Project Manager will provide the Contractor with written notice of acceptance (sign-off) or rejection (with documented material nonconformities in the functionality) within 5 business days, unless more time is needed, in which case the County will notify the Contractor in writing accordingly;
- e) Deficiencies found will be noted on the Acceptance Criteria sign off sheet and the Contractor will be provided an opportunity to correct the issues. The Contractor will be required to provide the County with an updated timeline and work around (fix) within three (3) business days unless additional time is requested in writing and agreed by both parties;
- f) Once the release is accepted, the functionality will be moved into the production module. And updated documentation will be provided to the County;

ARTICLE 14. REVIEWING DELIVERABLES

The Contractor agrees to submit all Deliverables required to be submitted for review and approval by the County in accordance with the specific requirements in the Scope of Services, and as specified in Appendix D "Acceptance Criteria". The Contractor understands that the County shall have final approval on all Deliverables.

In reviewing the Deliverables, the Contractor understands that the County will provide the Contractor with:

- i. a written notification of the County's approval,
- ii. a written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a minor deficiency, or,
- iii. in the case of a Deliverable that does not meet the requirements of the Agreement, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiently advise the Contractor of the basis on which the Deliverable was determined to be unacceptable.

The Contractor understands that failure by the County to provide a notice of approval does not constitute approval.

Furthermore:

- a) For each Deliverable made hereunder, the County shall have ten (10) business days, commencing on the first business day after receipt by the County of the Deliverable, to determine whether the Deliverable is approved as submitted, is approved subject to the correction by the Contractor of minor discrepancies, or whether it is unacceptable and therefore disapproved.
- b) Unless an extension of time has been granted by the County, within five (5) business days after receipt of the County's notification of "disapproval", the Contractor shall deliver to the County the necessary revisions and/or modifications for a second review by the County.
- c) If after the second review period the Deliverable remains unacceptable for the County's approval, the County may direct the Contractor to:
 - Proceed with the Work subject to the correction of all outstanding deficiencies which led to the County's determination that a Deliverable was not acceptable for approval on or before a specific date established by the County for correcting such deficiency or deficiencies; or,
 - Suspend all Work being performed in regard to the execution of the Agreement, except those services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for approval. Any suspension of the Work under this provision shall not alter the County's right to assess liquidated damages in the event that the Work is not completed in accordance with other provisions of this Agreement.
- d) The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the time the County specifies for such correction in the County's notice concerning a partial approval (including approvals subject to correction of minor deficiencies) or, if no time is given, promptly. If the County does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance or approval may, in the sole absolute discretion of the County, be regarded as void and of no effect.

ARTICLE 15. SOLUTION WARRANTY

The Contractor warrants, for a period of one (1) year from the County's Final System Acceptance, that the Solution and all related components provided by the Contractor under the performance of this Agreement shall:

- i. Be free from defects in material and workmanship under normal use and remain in good working order, wear and tear excepted;
- ii. Function properly and in conformity with the warranties in this Agreement;
- iii. Meet the performance standards set forth in the Scope of Services and the Original Equipment Manufacturer's published specifications.

During the Warranty Period, Contractor agrees to use all reasonable efforts and resources to provide to the County all corrections and/or modifications necessary to correct problems with the Equipment provided by the Contractor that are reported to Contractor, at no additional cost to the price identified in the Price Schedule.

During the Warranty Period, Contractor shall enforce the manufacturer's warranty and maintenance obligations relating to the Equipment and related Software it provides.

In the event the Software does not satisfy the conditions of performance set forth in the Scope of Services, Solicitation, and Contractor's proposal, the Contractor's obligation is to provide a Fix or a Work Around at the Contractor's cost and expense, or to provide different equipment, software and services required to attain the performance requirements set forth in the Scope of Services, Solicitation, and Contractor's proposal, in the sole discretion of the County. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's obligations hereof.

i. Any changes, modifications or maintenance or repairs not authorized by Contractor to the Software or operating environment to which it has been installed, including additional and/or unauthorized programs to systems hardware and/or workstations that result in system problems, shall automatically void any warranties herein.

ii.. THE WARRANTIES OF CONTRACTOR CONTAINED HEREIN ARE APPLICABLE ONLY IF THE SOFTWARE IS USED ON THE SPECIFIC EQUIPMENT AT THE LOCATION(S) SPECIFIED HEREIN. CONTRACTOR MAKES NO WARRANTY, EXPRESS, IMPLIED OR OTHERWISE, IF THE SOFTWARE IS USED ON ANY OTHER EQUIPMENT OR AT A LOCATION OTHER THAN THAT IDENTIFIED.

iii.. EXCEPT FOR THE EXPRESS WARRANTY STATED ABOVE, CONTRACTOR DISCLAIMS ALL WARRANTIES ON THE SOFTWARE FURNISHED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY. THERE SHALL BE NO LIABILITY ON THE PART OF CONTRACTOR FOR DAMAGES INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE 16. THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Contractor hereby assigns to the County, and the County shall have the benefit of, any and all subcontractors' and suppliers' warranties and representations with respect to the Solution provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the County; (ii) agree that such warranties and representations are enforceable by the County in its own name; and (iii) furnish to the County, the warranties and obligations as set forth in Articles 15 "Solution Warranty".

ARTICLE 17. FEES AND PAYMENT

17.1 Fees. The County shall pay the Fees or other considerations for the Software, Equipment, and Documentation as set forth on Appendix B "Price Schedule" attached hereto. All amounts payable hereunder by the County shall be payable to the Contractor upon invoice as defined in Appendix B. The County shall have no obligation to pay the Contractor or 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 Contractor. All Services undertaken by the Contractor prior to the County's approval of this Agreement shall be done at the Contractor's risk and expense.

17.2 Travel. With respect to travel costs and travel related expenses, the Contractor 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.

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

17.4 Invoices. All invoices issued by the Contractor, 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 Contractor. 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 Contractor to the County as follows:

Miami-Dade Public Works and Waste Management Department
2525 NW 62nd Street
5th Floor
Miami, Florida 33147

Attention: Aneisha Daniel
Phone: (305) 514-6630
E-mail: adaniel@miamidadegov

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

ARTICLE 18 . INDEMNIFICATION AND INSURANCE

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

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

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000

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 Department of Financial Services and are members of the Florida Guaranty Fund.

Notification of cancellation of insurance shall be provided to the County Project Manager and County Contract Manager listed Article 7 with thirty (30) days in advance notice. The Contractor shall provide notification of any reduction in coverage immediately upon becoming aware of such reduction.

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

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

The Contractor shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County within ten (10) calendar days 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 19. 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 20. 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 21. 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 22. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of

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

ARTICLE 23. 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 24. 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 25. AUDITS

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

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

Contractor's confidential or proprietary information generated or developed incidental to contract management and administration are not deemed a Documentation, Deliverable, Developed Works, nor work-for-hire under this Agreement, and are not subject to disclosure or unauthorized use without restriction by the Contractor, except if otherwise provided for by Florida's Public Records Law.

ARTICLE 26. 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 27. ASSIGNMENT

Neither the Contractor nor the County 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 28. 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 29. 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 30. 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 31. 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.

Notwithstanding the foregoing, in the event the County exercises this provision based on "with cause", then the County shall first provide the Contractor an opportunity to cure as provided under ARTICLE 33. Notice of Default - Opportunity To Cure. In the event the County elects to terminate "without cause", the County shall provide at least fifteen (15) days advance written notice to the Contractor.

- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

- ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.
- h) With regard to the Software, This Agreement may also be terminated by the Contractor if the County fails to comply with any term or condition of this Agreement and fails to correct such noncompliance within 30 days in accordance with Article 33, after receipt of Contractor's written notification thereof or such longer period as Contractor may allow in writing.

Within 30 days after any termination of this Agreement, the County shall return to Contractor all copies of the Software supplied or made under this Agreement together with a signed letter certifying that the Contractor has discontinued all further use of the Software and that all copies have been returned to Contractor or that they have been destroyed.

ARTICLE 32. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any Insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
 - i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 33. 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 or this Agreement with the County may be terminated, provided the County first allows 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 34. 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) actual lost revenues as defined in Article 53
- 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 35. 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 36. CONFIDENTIALITY

- a) Acknowledgement. As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law.
- b) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- c) 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 37. 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 Contractor 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 equipment and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

Contractor Proprietary Information. Notwithstanding the foregoing and any other provision in this Agreement, and subject to the limitations of Florida Public Records Laws, all drawings, technical manuals, software, and other technical data provided to the County pursuant to this Agreement is the proprietary information of the Contractor shall not be resold by the County or used or disclosed for any purpose other than in connection with the County's use of the goods and services provided hereunder. If the County discloses such proprietary information to a third party for a use authorized under this Agreement, prior to such disclosure, the County shall require such third party to execute a confidentiality agreement in a form acceptable to the Contractor. The County acknowledges that any unauthorized use or disclosure of such proprietary information will cause irreparable harm to Contractor. If the County violates the provisions of this paragraph, the Contractor may be entitled to obtain equitable relief to protect its interests herein, including, but not limited to, injunctive relief, as well as monetary damages. Prior to access to Contractor proprietary information pertaining to Encompass 6 Readers, any party requesting access shall first be required to execute a Contractor Encompass 6 Reader non-disclosure agreement.

ARTICLE 38. 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, an 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, excluding Competitors. 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.

ARTICLE 39. 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 County 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 40 INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

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

Miami-Dade County Inspector General Review

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

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

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

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

ARTICLE 41. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to

the Services required under this Agreement, including, but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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

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

ARTICLE 42. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 43. 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 44. 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 45. 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 46. 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 47. 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 32 of this Contract.

ARTICLE 48. 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 49. 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 Contractor is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Contractor for canceling service/maintenance during the year.

ARTICLE 50. FORCE MAJEURE

Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war. Notwithstanding the foregoing, the failures of any of the Contractor's suppliers, subcontractors, or the like shall not excuse the Contractor's performance except to the extent that such failures are due to any cause without the fault and reasonable control of such suppliers, subcontractors, or the like including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war.

ARTICLE 51. LIQUIDATED DAMAGES

The County and Contractor hereby agree that the delivery of completion of project milestones as outlined in Appendix A, "Scope of Services" are the essence of this Contract. Should the completion date described in Appendix C, "Implementation Timeline," not be achieved by the time specified (or as subsequently modified by mutual agreement of the parties), there may be deducted at the County's election, not as a penalty but as liquidated damages of Two Thousand Five Hundred Dollars (\$2,500.00) per day for each and every calendar day of delay beyond the duration outlined in Appendix C.

Except with respect to defaults of Contractor's Subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the default or negligence of the Contractor, including delays resulting from the action or inaction of the County.

ARTICLE 52. TECHNICAL SUPPORT PERFORMANCE PENALTIES

The County has the option of assessing performance penalties for failure of the Contractor to meet the response and repair times required. Performance penalties will be applied at the following rates:

<u>Toll Lane Equipment</u>	<u>Hourly Charge Per Lane</u>	<u>Peak Period Hourly Charge Per Lane</u>
Response Time	\$100	\$200
Repair/Replacement Time	\$200	\$300

Peak period shall be defined as Saturdays and Sundays between the hours of 8 AM and 4 PM, as well as holidays and special events. The peak period resolution time requirement will be dependent upon the required repair, the circumstances in the lane and the ability to perform the repairs without closing the lane to traffic. The County will advise the Contractor in writing of its intent to assess performance penalties within 5 days of becoming aware of occurrence of any delay. The time frame for measurement of response time and the resolution time shall begin at the exact time the problem was reported to the Contractor. The time frame for the repair shall begin as soon as the Contractor arrives at the site or begins work on the problem. Partial hours may be treated as whole hours at the discretion of County, and performance penalty amounts may be withheld from payments.

ARTICLE 53. ACTUAL DAMAGES

In conditions in which the actual toll revenue losses cannot be recovered by the County from transaction from the customers, the Contractor will be held responsible for the greater of lost revenue or performance penalties due to equipment failure. The Contractor will be held responsible for these lost revenues when (1) the Contractor has been informed of the problem and does not respond and/or repair within the specified time periods, or (2) when it is determined that the equipment failure is a result of Contractor negligence and/or intentionally wrongful act. The County reserves the right to estimate the amount of lost revenue and invoice the Contractor for that amount, provided it provides detailed supporting documentation as to the transactions that comprise the estimate, which may be subject to dispute by the Contractor. Except with respect to defaults of Contractor's Subcontractors, the Contractor shall not be liable for actual toll revenue loss or performance penalties or estimated revenue loss that arise out of causes beyond the control and without the default or negligence of the Contractor, including delays resulting from the action or inaction of the County..

ARTICLE 54. SOFTWARE ESCROW

The County requires that the Contractor maintain a software escrow account throughout the life of the Agreement to protect against failure of the Contractor to provide the agreed upon services. A copy of the Contractor's licensed software source code, and Contractor enhancements or modifications or customization or Developed Works of source code is to be kept by a trusted third party to ensure that the County will have access to the source code in the event that the Contractor is unable to support the software. The Contractor is required to maintain the most current version of the application with the escrow agent including, but not limited to all incremental releases and upgrades as well as any software customization or Developed Works created for the County. The terms and conditions associated with such software escrow services are outlined in Appendix E, "Escrow Agreement." Notwithstanding the forgoing and any other provision in this Agreement, Commercial Off The Shelf (COTS) and/or third party providers (inclusive of subcontractors and suppliers) of software is expressly excluded from escrow requirements, and subject to their respective license provisions.

Solely in the event of a release event under the Escrow Agreement, the Contractor grants to County, a non-exclusive, perpetual, paid in full license, to install, use, copy, publicly perform and digitally perform, modify and create derivative works from the Deposit Materials delivered by Escrow Associates to the County, for the sole purpose of continuing the benefits afforded to the County under this Agreement, including the development of patches and upgrades solely for County's internal use. County shall have a right to modify and customize the Software, or to have the Software modified and customized by third-parties, excepting for a Competitor of Contractor. Should County require a third party, which is a Competitor, to modify the Software for County's business purposes, County must give Contractor written notice of the third party Competitor and receive Contractor's written consent thereto, which consent shall not be unreasonably withheld. Consent shall be considered to be received if a response is not provided by the Contractor within 30 days.

ARTICLE 55. 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 Program are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407.

ARTICLE 56 LIMITATION OF LIABILITY

a. Contractor's total liability to the County for any and all liabilities arising out of or related to this contract, from any cause or causes excluding property damage and personal injury or death, and regardless of the legal theory, including breach of contract, warranty, negligence, direct damages, liquidated damages, loss of revenue or actual damages, strict liability, statutory liability, or any indemnification obligation, shall not, in the aggregate, exceed the total value of the initial term the Agreement.

b. In no event shall either Contractor or the County be liable to the other for any special, indirect, incidental, consequential, or economic damages (including, but not limited to lost profits and lost business opportunity), regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages

c. Any claim by the County against Contractor relating to this contract, other than in warranty, must be made in writing and presented to Contractor within one (1) year after the earlier of: (1) the date on which the County accepts the deliverable at issue; or (2) the date on which Contractor completes performance of the services specified in this Contract. Any claim under warranty must be made within the time specified in the applicable warranty clause.

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

CONTRACTOR

By: [Signature]
Name: Jim Wilson
Title: Senior VP
Date: 4/1/13
Attest: [Signature]
Corporate Secretary/Notary Public

MIAMI-DADE COUNTY

By: [Signature]
Name: Carlos A. Gimenez
Title: Mayor
Date: 5/22/13
Attest: [Signature]
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

[Signature]



APPENDIX A – SCOPE OF SERVICES



Appendix A – Scope of Services

Project Description

The Project shall include the development, design, procurement, implementation, system testing and one year warranty of a toll collection system and back office solution meeting the specifics described herein. Contractor shall manage, plan, execute, and control all aspects of the Project. Contractor shall coordinate and report to the County or its duly authorized representative all activities and shall document and report all Work in accordance with the contract.

Section 1 – Project Milestones

Milestone 1 – Notice to Proceed

Notice to Proceed (NTP) shall be defined as the date on which the Contractor receives notification of the issuance of the Blanket Purchase Order associated with the award of Contract No. RFP861.

Milestone 2 – Project Planning

The following requirements shall be submitted within 20 days following the issuance of NTP. Each shall be reviewed and updated by the Contractor every 30 days following the issuance of NTP.

- a. Prepare and deliver the draft Project Management Plan (PMP). Contractor's management approach shall be described within the PMP and provide all components of an effective and efficient management system.
- b. Develop a detailed project schedule for the development and testing the System.
- c. Participate in meetings and presentations with the County, consultants, and others as requested. The Contractor's attendance at such meetings and presentations may require travel at the Contractor's expense.
- d. Contractor shall also be responsible for coordinating its activities with the County and other entities that are directly or indirectly impacted by the Work. Contractor shall be responsible for documenting and reporting all Work in accordance with the requirements of the contract.

Within 10 days of receipt of the PMP, the Contractor will conduct a Project Initiation Conference. The purpose of the conference shall include, but not be limited to:

- a. Introduce key personnel of the Contractor.
- b. Review the overall design of the Project as based on the Contractor's proposal and project requirements.
- c. Review key aspects of the PMP, the quality management plan, and the initial program schedule.
- d. Review the preliminary requirements trace matrix and discuss any exceptions.
- e. Discuss early project coordination.

The Contractor shall cooperatively develop an agenda for the Project Initiation Conference. The Contractor shall develop and deliver a presentation and any documentation to support the review of the proposal and aspects of the work to be performed by the Contractor.

Detailed Design Documentation

The Contractor shall provide functional narrative text, system and subsystem block diagrams, data flow diagrams, data structure diagrams, schematics, and any other graphic illustrations to demonstrate the technical adequacy of the system design approach and compliance for System Hardware and Software with quality assurance, reliability, maintainability, Software development, and other requirements of these specifications.

The Detailed Design Document (DDD) shall be reviewed by the County. The DDD is an extension of the contract and the Proposal. It shall include such detail as block diagrams, screen layouts, report formats, software design, testing

procedures, operational procedures, and other pertinent design documentation. A list of equipment for each function along with a description of its role shall be provided. Any equipment listed in the DDD that has not been listed in this Appendix A or the Contractor's Proposal, shall be accompanied by that equipment's specifications. Such equipment shall be provided at no increased cost to the County provided the Contractor's design is not altered during design meetings.

The topics to be discussed in the DDD shall include at a minimum the following:

Tolling Segment design

1. Functionality
2. System function flow chart for each Tolling location
3. Hardware, specifications, and integration
 - a. Project host server
 - b. ETC subsystem
 - c. DVAS subsystem
 - d. AVC subsystem
 - e. Image capture subsystem
4. Network communications
 - a. Maintenance functionality
 - b. MOMS
 - c. Maintenance service and user interface
5. Software/database design
 - a. Software specification
 - b. Operating system
 - c. Programming language
 - d. Version management
6. Reports
 - a. Performance compliance
 - b. Revenue
 - i. Toll transactions
 - ii. Image transactions
 - iii. Hourly, Daily, monthly, and yearly transactions by lane, class, revenue
 - iv. Code-offs by lane and plaza, day, month
 - v. Image tolls by lane and plaza, day, month
 - vi. OCR performance report
 - c. System Maintenance

The Contractor shall conduct a Design Review Meeting. The meeting shall be a formal presentation to the County covering the DDD on how the design and development of the Software and Hardware meet all project delivery, functional, and performance requirements. The meeting shall also include information on identified risks and the associated mitigation, and review the quality assurance methods that will verify and screen the implementation of the designed Solution. The meeting presentation shall last no more than one business day. Topic for the meeting should include, but not limited to, the major sections included in the DDD.

Milestone 3 – System Design and Development

Quality Management Plan

The Contractor is required to develop a quality program covering Solution design, Software development, and installation and testing of Software and equipment and procedures that follow all the elements indicated in this Section.

The Contractor has the responsibility for the quality of all services related to the design of the Solution by the Contractor, the installation of the tolling system by Contractor, and to allow the County due diligence in overseeing the Toll Systems Services processes and products.

Within 30 days of the NTP the Contractor shall prepare a Quality Management Plan (QMP) for the County's review and approval. The QMP shall outline the internal Quality Control (QC) and Quality Assurance (QA) procedures to be followed by the Contractor during the preparation of all Toll lane work, Software development, and Installation and Testing.

The QMP shall describe procedures for coordinating Toll Systems Services performed by different individuals in the same area, or in adjacent areas or related tasks to ensure that conflicts, omissions, or misalignments do not occur among design or installation documents or between the drawings and the specifications. It shall also include the coordination of the review, approval, release, distribution, and revision of documents involving such parties.

Procedures shall:

- Ensure that Contractor personnel are familiar with all the provisions of the Contract concerning their respective responsibilities.
- Provide for the education, training, and certification, as appropriate, of personnel performing activities affecting or assessing the quality of the Work to assure that such personnel achieve and maintain reasonable proficiency.
- Ensure that the Work is performed according to the QMP, generally accepted practices for these types of services and the contract.

Lane System Specifications

Contractor shall design the Lane System for toll collection and shall meet the following standard specifications:

- a. All travel lanes shall be instrumented for the capabilities to read SeGo and Allegro transponders deployed by all Florida Turnpike Enterprise (FTE) interoperable partners to classify vehicles and to capture video images. The system shall correctly detect, classify, and associate vehicles passing through the tolling segment either on, or between the traffic lanes or on or between the shoulder and shall correctly associate the vehicle with the correct classification as either a FTE toll transaction, annual plan customer or image transaction.
- b. The Lane System shall correctly read the transponder regardless of the vehicle's position within the instrumented travel lanes of the tolling segment and produce a toll transaction for vehicles that pass through the tolling segment.
- c. The Lane System shall capture images of the front and rear license plates and associate the vehicle and vehicle class regardless of the vehicle's position within the instrumented travel lanes of the travel segment for all vehicles regardless of whether a valid transponder read has occurred.
- d. Supplemental lighting for the license plate image capture shall not distract motorists driving in either direction, nor shall it cause light pollution at tolling segments that are in proximity to neighborhoods.
- e. For every vehicle, the Lane System shall record the measured classification for the vehicle.
- f. Tolling segment components of the Lane System shall be configured to utilize a Tag status file of approximately 7 Million transponders. Each controller shall be able to determine the tag status for a transponder account status database of 7 Million tags.
- g. The Lane System shall communicate with the host to receive tag status, fare schedules, etc., in the format required by either the County or the FTE. The Lane System shall communicate with the host to send all transaction data for both Open Road Tolling (ORT) and image transactions in the format required by either the County or the FTE Interoperability Business Rules.
- h. The host and Customer Account Management System (CAMS) will be located at the Venetian plaza buildings and shall be capable of processing the data compiled by the toll system in the travel lanes, processing the data to and from FTE via the Uniform Financial Message (UFM) format, meeting the Interoperable Business Rules and Interface Control Document (ICD) requirements, and providing the system's standard reports and the reports required by the County.
- i. The Lane System host shall communicate with the FTE Interoperable Host to exchange transaction data between agencies, for the collection of revenue, and for revenue reconciliation in the format required by either the County or Interoperability Business Rules.
- j. The system shall be capable of operating for a minimum of 30 days without connection to the host, and shall store all transactions and image data in the tolling segment computer system for transfer when communication is reestablished.

- k. The system shall be powered with a battery backup Uninterruptible Power Supply (UPS) system that provides sufficient backup power. The UPS shall provide a minimum of 15 minutes of operations after loss of utility power.
- l. The Lane System shall be redundant so that no single point of failure can result in the complete loss of toll collection or enforcement in any lane (failures due to severed cables are excluded from this requirement). The system elements that need particular design attention are the AVC subsystem and tolling zone controller.
- m. The Lane System shall self-monitor all components and report all anomalies in real time via Management Online Management System (MOMS) to be housed at the Contractor's location.
- n. MOMS alert messages shall be transmitted to the toll system host and to the server located at an office identified by the County.
- o. The Contractor shall respond automatically to MOMS alerts to satisfy agreed upon system response times as defined in Section 2.
- p. The Contractor will assist the County in the completion of forms that are required for acquiring any needed FCC licenses for the operation of the Electronic Toll Collection (ETC) equipment at the tolling segments including the preparation of applications for the Authorities' signature. The County will pay the FCC fees if required for filing the applications.
- q. The Lane System shall not separate a single vehicle or a vehicle towing a trailer or trailers into multiple vehicle transactions.
- r. The Lane System shall accurately classify vehicles by axle under all weather and ambient light conditions during periods of peak and off-peak travel times in compliance with the following performance requirements:
 - i. Vehicle detection and separation of 99.5%
 - ii. Vehicle classification accuracy (i.e. axel counts) of 99.5%
 - iii. Vehicle/transponder correlation accuracy of 99.5%
- s. The Lane System shall store all transactions for a period of one year and all violation transactions for a period of two years. All data beyond these periods will be stored in the tape backup of the system.
- t. The image capture system shall be designed to ensure the capture of one or more readable license plate images. The images shall be color images that provide a Region of Interest that includes the vehicle license plate. The system shall be capable of processing the images by Optical Character Recognition (OCR). The system shall be designed to minimize the need for human image review with the OCR confidence rate established in compliance with the following performance requirements:
 - i. Image correlation success of 99.5%
 - ii. OCR attach rate of 85%
 - iii. OCR accuracy rate of 95%
- u. The fields of view of adjacent cameras shall overlap sufficiently so as to prevent image loss for vehicle plates that pass midway between the centers of view of the cameras.
- v. The OCR image processor shall produce both the plate number and jurisdiction of issue for all types of license plates including motorcycle plates. The number of cameras as defined in this Section 1, Milestone 5 provided, camera orientation, and resolution shall be sufficient to support the image capture and OCR requirements and support redundancy for camera failure.

Hardware Requirements

Contractor shall provide all Hardware, Equipment and Software as defined in this Section 1, Milestone 5, required for the Toll Collection System and CAMS. Equipment shall be designed, fabricated, and tested to ensure that it operates satisfactorily without material degradation for a minimum of ten years. Expendable and consumable materials and supplies will not be included in this requirement. All equipment, supplies, and materials for this system shall be new and unused, when installed.

Replaceable and repairable modules shall be used whenever possible to simplify troubleshooting, reduce downtime, and reduce operational and maintenance costs. Components shall be designed to ensure in-lane calibration and operational verification is minimized.

All Tolling Segments shall be designed, installed, connected, and documented in a uniform manner. Uniform components shall be designed and configured for all Tolling Segments. Each Tolling Zone Controller and other system components shall be configured identically, with the same boards in the same slots, the same hardware and software, the same data storage, and the same connectivity.

All major assemblies (subassemblies, modules, and parts performing identical functions) shall be electrically and mechanically interchangeable.

All assemblies, subassemblies, and modules shall be readily accessible for removal, testing, or replacement without extensive removal of other modules or assemblies. Components shall be located so that there is visibility and access for the use of hand tools and standard test probes where maintenance is required.

Housings and Cabinets

The material and finish for new housings and cabinets shall be environmentally resistant to outdoor highway environments with wide temperature fluctuations. All cabinets and housings shall be fitted with required gaskets, grommets, and filters to prevent dust, dirt, smoke, moisture, or other contaminants from entering the enclosures in accordance with the application in which the equipment is employed.

Wires and Cables

All electrical wires and cables shall be installed point to point with no interruptions. All cables shall be labeled on each end. There shall be no exposed wires or cables. All electrical wires shall be properly insulated and protected to prevent wear and abrasion.

Tolling Business Requirements

- a. The Contractor shall comply with all interoperability requirements and business rules established by the FTE Interoperability Committee including, but not limited to, the Interoperability Business Rule, ICD's, and amendments issued during the term of the contract.
- b. The system shall provide reports for the reconciliation of revenue from Interoperable Authorities for use in comparing the systems reported transactions and revenue with the Statewide Interoperable Network Reports received. At a minimum the reconciliation report will provide:
 - i. Transaction number
 - ii. Tolling point (location)
 - iii. Transponder number or license plate
 - iv. Date and time (hour, minute, second)
 - v. Disposition status/explanation
- c. The system will automatically receive the Tag Validation Lists from FTE and updates exchanged by the Interoperable Authorities as they occur during the day. The Tag Validation List will contain as a minimum the Home Authority identifier, transponder identification number, license plate number, and transponder status for each Home Authority. The Tag Validation List shall be in use within the time specified in the Interoperability Interface Control Documents (ICD's). The system shall maintain a history of the Tag Validation Lists as required in the ICD.
- d. Transactions shall be processed to the FTE and validated in accordance with the business rules and ICD's.

Violation Process

The system shall generate a violation status file and transmit it to FTE's violation processing center. The Host – to – VPC (Violation Processing Center) consists of the following file transfer:

Violation Status File (Pushed from the Host to the VPC)

When a Violation Status File is packaged for transmission, the sender must construct the File Header so that it contains all of the following required fields: Vehicle Classification, Toll Rate Calculation, and Plaza Identification. Once the File Header is constructed, the file contents are appended, and the entire file is transmitted to the appropriate directory location for processing.

Vehicle Classification

The system shall be capable of implementing axle based rate tables with rates established for 2, 3, 4, 5, and 6 axle vehicles.

Toll Rate Calculation

The system will use the rate tables to establish the transaction toll amount. The system shall be capable of calculating toll amounts using a standard per axle toll rate, a time of day toll rate, and a trip toll rate.

Plaza Identification

The system will create a plaza identification list that identifies the lane, location (Plaza name), and id number.

Reports

The Contractor will provide their standard reports. These reports will consist of information required to manage:

- System Maintenance
- Contractor Performance Reporting
- Transaction Processing (including classification and revenue by lane, plaza, or toll road)
- Transaction code offs
- Violation Processing

Milestone 4 – Software Development and Testing

The Solution will include the following specific customized component to be developed during the Software Development and Testing Milestone:

- Interface to FTE (UFM)
 - Transactions
 - Images
 - Database replication of tag lists, black list, fare updates
- Interface to Payment Gateway
 - Detailed specification to be provided during design phase
- Annual Pass Program
 - Recommend design review to determine operational and technical scope
 - The following Annual Passes will be provided:
 - Rickenbacker Resident Plan
 - Rickenbacker Commuter Plan
 - Rickenbacker Commuter- 4Plan
 - Rickenbacker Recreational Plan
 - Rickenbacker School Plan
 - Rickenbacker For-Hire Plan
 - Venetian Owner Plan
 - Venetian Commuter Plan
 - Venetian For-Hire Plan

This milestone shall also include CAMS configuration and testing.

Milestone 5 – Equipment Procurement and Assembly

The Contractor will provide Equipment Procurement and Assembly to include the following Solution components:

The Rickenbacker Toll Plaza will consist of two separate 2 lane ORT tolling zones traveling in the same direction under the center of the existing canopy structure. Infrastructure changes to the existing layout will be the responsibility of the County. Each zone will be outfitted with the following equipment:

- 2- Lane Server Blades
- 2- AVI Blades
- 4- VES Blades
- 2- ORT Controller Blades
- 3- IVIS Blades
- 2- OPUS Blades

- 5- Infinity Tip-Out Racks
- 2- DVAS Cameras
- 2- Lane System IVIS Sensors
- 4- Dual Camera VCARS
- ORT Backplane
- 2- OPUS Profiling Units
- Eaton 3.1 Kilovolt Uninterruptible Power Supply- one for all four dedicated AVI lanes and one for each ORT zone

The Venetian Toll Plaza will consist of four separate Dedicated ETC lanes utilizing the existing infrastructure. Any unanticipated infrastructure changes to the existing layout will be the responsibility of the County. Each Dedicated ETC lane will be outfitted with the following equipment:

- Lane Server Blade
- AVI Blade
- IVIS Blade
- OPUS Blade
- Infinity Tip-Out Rack
- DVAS Camera
- Lane System IVIS Sensors
- Traffic Control Pedestal
- OPUS Profiling Unit
- Eaton 3.1 Kilovolt Uninterruptible Power Supply

The Plaza and Host Systems will consist of the following hardware and software:

- Dell PowerEdge R720 DVAS
- Dell PowerEdge R720 DB/APP/DC
- SQL User CAL 2012
- SQL Server Enterprise 2012
- Windows Server 2012 STD
- Windows Server 2012 CALS
- Antivirus software
- Tape Drive with Backup Software
- Dell PowerEdge R210 Domain Controller
- Dell Workstation with Monitor
- KVM Switch
- Server Rack
- Eaton 3.1 Kilovolt Uninterruptible Power Supply

The CAMS component will consist of the following hardware and software:

The back office servers and networking equipment will be designed following initial design meetings upon confirmation of the server room location. The preliminary system consists of an embedded hypervisor implementation provided with VMware's ESXi running on HP ProLiant DL380 Gen8 servers using a combination of 1 Gb and 10Gb Ethernet ports for high-bandwidth network throughput. Networking is provided using two Cisco Catalyst 3750-X 24-port switches along with a CheckPoint firewall solution for extranet security. The production system operates on two DL380's, while a backup server and domain controller operate on 1 DL380. Storage is provided via HP P2000 Gen3 MSA array connected via fiber channel and providing a minimum of 5TB usable storage at RAID 5 with a hot spare. Backups are performed using an HP MSL2024 1 STO-5 Ultrium 3000 SAS tape library system with a capacity of 72 TB compressed 2:1 or 36 TB native. The CAMS component shall also include functionality to control electronic variable message signs; however, such functionality is not compatible with all makes and models of commercially available signs. In the event that the County elects to use this functionality, the County must first confirm with the Contractor that the make and model of signs to be used are compatible with CAMS.

Additional Materials/Equipment

At the request of the County, Contractor will procure and provide additional related materials and equipment to be used in association with the Solution. Such materials and equipment will be provided at a mutually agreed cost at the time of purchase, given that such purchases shall not exceed a 15% markup beyond Contractor's actual cost.

Milestone 6 – Site Installation and Testing

Tolling Installation

The System Installation Plan will include subsystem and component installation sequencing, the system Commissioning process and a detailed schedule. During installation and field-testing, the Contractor will have a full time installation manager on site to coordinate with the County and Contractor personnel. Ten days prior to system commissioning, the Contractor will submit a Supplemental Installation Plan addressing the procedures for system commissioning. This Supplemental Installation Plan will address the methodology and process for going live with the new system at each location.

Utilities

Contractor shall be responsible for the supply and installation of all cabling, and equipment, as necessary, to take power and communications from the utility access point(s) to the individual equipment items installed at the Tolling locations. Miami-Dade County shall maintain responsibility for the billing and payment of all utilities.

Communications

Internet communications will be supplied at each tolling location by the County. Contractor shall be responsible for connecting to the communications access point and for supply and installation of communication cables and equipment to bring communication to the Tolling Segment, as well as for providing and installing communication cables and equipment within the Tolling Segment. This work includes all cables, and equipment. All other communications access required for Contractor's proposed system should be the responsibility of the Contractor. The County shall maintain responsibility for the billing and payment of all recurring communications costs to the Tolling Segments and Host location during the course of the Agreement.

Toll Plaza Infrastructure

The County will be responsible for infrastructure modifications to the toll plazas. The Contractor is required to provide the location requirements for positioning the conduits, pads, and access points as part of the System Installation Plan required above within 30 days of NTP.

Roadside Cabinets

The Contractor shall coordinate with the County to develop a design for roadside electronics housings. Tolling Zone Controllers and other roadside electronics shall be housed in dust-tight and watertight enclosures. The housing shall be a secure, and if necessary a heated and air-conditioned enclosure. The use of a roadside cabinet for individual locations will be determined through mutual agreement between the Contractor and the County.

Milestone 7 – System Integration and Testing

The Contractor shall demonstrate through the process of tests that the System provided by the Contractor is in compliance with the requirements set forth in this document and its functionality complies with the technical requirements and the final approved DDD. Where possible, tests shall be conducted in an "end-to-end" manner so that results may be tracked through each possible level of the System. For example, the impact of parameter changes observed in the behavior of the lane systems or results of tests that are conducted in the lanes shall be tracked at the Host.

Testing shall focus results on providing accurate system information for the processing of transponder transactions and information for the prosecution of toll violators. Testing shall include, but not be limited to, the following:

- ETC transaction generation
- Video transaction processing
- Vehicle classification
- Vehicle detection and separation
- Image capture and OCR
- Load testing
- MOMS functionality
- Component monitoring and diagnostics
- Availability tracking
- Remote access
- Storage capacity analysis
- Tolling Zone Controller initialization/time update and synchronization
- Transponder status file
- UPS operation and backup power

- Communication failure
- Tolling Zone Controller operations
- Project host server

For the Commissioning test, the Contractor shall utilize live, uncontrolled traffic when testing the performance of the System. Test vehicles may be mixed into the live traffic and the results may be part of the sample data.

The Contractor shall prepare a detailed Test Plan for testing all components of the Project and the fully functional system. This document shall include plans for functional testing and performance testing, as applicable, during the Site Acceptance Test (SAT), Commissioning Test and Operational Test. The Test Plan shall provide a matrix listing each requirement and how that requirement is to be tested or demonstrated, by inspection, analysis, or test. For those requirements that are to be verified through testing, the matrix shall outline the particulars, such as the conditions of the test and the number of test runs planned in addition to the method of verification. Tentative dates for conducting the various tests shall be included in the Test Plan, as submitted by the Contractor.

Test Procedures

Contractor shall prepare detailed Test Procedures for all tests with respect to the functional requirements detailed in this document. The Test Procedures shall be included in the Test Plan. The Test Procedures shall cover the following, at a minimum:

- Test explanation and purpose
- Test set-up
- Entry and exit criteria
- Step-by-step procedures for controlled tests
- Pass/Fail acknowledgement
- Expected results for each step
- Signature block(s)

Test Plan

The Test Plan shall show when all requirements listed in the compliance trace matrix are being tested, demonstrated, or verified by inspection or analysis. Testing operations shall be conducted in a manner and sequence that assures the least interference with traffic, with due regard to the location of detours and provisions for handling traffic. The procedures shall detail the test environment, all interconnections, the configuration, and all settings for each test.

The approved test procedures shall be submitted 14 days prior to the commencement of the test for review by the County.

Test Reporting

The Contractor shall submit a written report documenting the results for all tests performed and comparing them to the expected results. The Test Report shall include all applicable test data utilized to verify the outcome of the test in an appendix to the report. A log of modifications to the System, including Software and Hardware, during each test shall be maintained in the Test Report. Any revision to a Test Report or a subsequent Test Report shall include all applicable Software and Hardware versions and revision logs from the previous report. Upon the County's acceptance of the successful completion of each Test Report, the Contractor shall be given the authorization to move forward.

Site Acceptance Test (SAT)

The Contractor shall perform a SAT that includes a series of baseline test procedures to demonstrate functionality of the roadside System, in an unambiguous fashion. The intention of SAT is to validate functionality of each installed Toll location once it is installed. SAT validation will be performed on a lane by lane basis. All roadside functional requirements of the System, excluding external interfaces, are to be validated during the SAT. Conditions of the test shall include items, such as lighting, type of vehicle, and the speed and movement of the vehicles through the Tolling zone (left to right, straddling lanes, vehicle speed, and mix of vehicles with and without tags).

During the SAT, the processing of transactions shall verify that no information is missing and validate related business rules for the data (i.e., automatic operations in the application to check for duplicates). Exceptions shall be flagged and provisions to modify transactions as data errors are detected shall be provided.

The SAT shall include correlation testing of platoons of closely spaced vehicles, classification of various vehicle sizes, vehicles changing lanes, straddling, vehicles driving in the shoulder, and some vehicles with and some without tags to verify that the System correctly identifies and captures images of the vehicles without transponders. This identification shall be accomplished without recourse to the use of license plate numbers of the test vehicles.

Since the individual lanes will open upon completion, the Host interface to FTE shall be tested in accordance with the accepted ICD during each SAT.

The County shall be allowed to witness the testing, and the Contractor shall have the responsibility to perform the testing. The testing shall provide sufficient confidence to Miami-Dade County, in its sole determination, that the Contractor's installed System meets Miami-Dade County operational requirements, standards and performance criteria, and is ready for the Commissioning and operational tests.

If there are any failures or anomalies in conducting any test step, the Contractor shall take the necessary corrective action and the test shall be repeated. In the case that corrective action is undertaken by the Contractor, it shall perform any necessary regression testing to ensure that such corrective action has not adversely affected the system's ability to pass previously conducted test steps. If necessary this process shall continue until success is achieved.

The Contractor shall provide the required support personnel and any necessary test vehicles and test equipment (e.g. test transponders). Testing shall be conducted in accordance with the Project Schedule, the final approved Test Plan, and final approved SAT procedures.

Within 14 days of successful completion of the SAT, the Contractor shall submit a SAT Report, which describes the results of the test including a punch list of any outstanding items or issues. The SAT Report shall document the test activities, including any redlined copy of the test procedures, and test results, including screen-shots and reports, and shall include a narrative explaining the activities and results.

Commissioning Test

Upon acceptance of the SAT at each Toll Plaza, the Contractor will initiate a Commissioning Test of the entire Solution. This Solution Commissioning Test shall demonstrate full "end-to-end" functionality of the Solution including any and all external interfaces to the Project, including FTE's UFM and other interfaces as required, and performance of that interface (load testing). Commissioning Tests shall occur only after all SAT has been completed and the County approved. Commissioning Testing shall be performed on the installed production system in the field using a combination of controlled test vehicles (for functionality testing) and live traffic (for performance/load testing). The purpose of the Commissioning Testing is to verify that the Solution and all interfaces are complete and function as an integrated system.

The Commissioning Test shall be conducted to verify that all functional elements of the Solution, its components and all external interfaces provided and installed by the Contractor under this contract are in conformance with the technical and operational requirements specified in this document, the Approved DDD, and the applicable ICD.

The Host interface to FTE shall be tested in accordance with the accepted ICD.

The County shall be allowed to witness the testing, and the Contractor shall have the responsibility to perform the testing. The testing shall provide sufficient confidence to the County, in its sole determination, that the Contractor's installed Solution meets Miami-Dade County operational requirements, standard and performance criteria, and is ready for operational testing.

The Contractor shall provide the required support personnel and any necessary test vehicles and test equipment (e.g. test transponders). Testing shall be conducted in accordance with the Project Schedule, the final approved Test Plan, and final approved Commissioning Test procedures.

Milestone 8 – Final System Acceptance

Final System Acceptance shall be inclusive of the associated Solution training. Contractor's approach to training is to conduct the training onsite and in person with each of the following four groups: Maintenance Staff, System Administrators, IT Staff, and Customer Service Representatives. The Maintenance Staff, System Administrators, and IT staff training each can be conducted in a one-day sessions after the same staff is familiarized with the equipment during the installation period. A two-day training course for the Customer Service Representatives will be provided to train County staff to operate the CAMS back-office software. The training class will include documentation in the form of user manuals. If additional training is needed, Contractor has the ability to provide online, web-based training as well. Contractor will provide an executive level training of no more than half a day in length. The level of detail provided during the training class will be consistent with the level of ongoing involvement of County staff. Contractor will provide onsite refresher training of up to two days per year at the request of the County, with the content to be defined at the time of request.

Within seven days of successful completion of the Commissioning test, the Contractor shall submit a Commissioning Test Report, which describes the results, including a punch list of any outstanding items or issues identified during the test

performance. The Commissioning Test Report shall document the test activities, including any redlined copy of the test procedures, and test results, including screen-shots and reports, and shall include a narrative explaining the activities and results. Upon completion of training and delivery of the Commissioning Test Report, the County shall Review the Deliverable in accordance with Article 14. Approval of the report will constitute Final System Acceptance and begin the Warranty period.

Section 2 – Maintenance and Support Services

Contractor responsibilities:

The Contractor will provide maintenance services over the term of the contract for both software and hardware. Contractor will provide one full-time equivalent technician to provide preventative, predictive and corrective maintenance services on the roadside equipment, as well as part time software support personnel to apply new software releases, software upgrades, updates, patches, bug fixes, optional software features, and general support for Infinity Lane Solution, CAMS, MOMS, and Maintenance Monitoring System (MMS). Additionally, at least two local technicians will be trained and available to support the dedicated technician in the event of vacation time, illness, or heavy workload. Further, Contractor will provide 24/7 help desk support for the Infinity lane solution via the dedicated technical support personnel. Contractor will be responsible for maintaining database software updates to SQL and Windows software. Contractor will establish the backup schedule and maintain backup operations, including correction of errors during backup processes. This shall include the responsibility to complete data backup and restoration at the request of the County. Contractor will be responsible for maintaining network components of the Lane System. All support requests for CAMS must be completed via MOMS.

Maintenance Applications

Contractor will provide both MMS as well as MOMS to assist in the performance of system maintenance.

Software Maintenance

Contractor will use a product approach to software development. A common software code base will be used for all programs that are deployed at the County. The County will have the same executables, libraries, modules, and databases provided to all Contractor customers to provide a new customer quickly with a mature, current, tested, debugged, and fully documented system when they begin operations.

Software product development and maintenance updates will follow controlled and defined methodology from requirements and design, through development and into Quality Assurance (QA) testing. Within the QA process, Contractor will verify software changes based on the various production system configurations prior to generating a release to the County.

Changes to software will be recorded in release notes. The release notes include a description of the changes made and the relevant software version numbers. MMS contains a screen for verifying software version numbers on the Infinity blade servers in the production system. The screen will be color coded, with green indicating the version is current and red indicating the version is not current. Periodic checks are made to verify the software status.

Hardware Maintenance

Contractor will perform three levels of roadside equipment maintenance services: preventative, predictive, and corrective. A full preventative maintenance schedule will be provided and agreed to during the Maintenance Staff training session, but the essential preventative and predictive maintenance tasks are as follows:

Daily Maintenance:

- Visual inspection of IVIS
- Visual inspection of VCARS
- Visual inspection of TCP
- Visual inspection of Lane Canopy Signal
- Visual inspection of antennas
- Check of traffic reports
- Check of MMS to ensure transponder and Image capture

Monthly Maintenance:

- Ensure camera trigger points are accurate

- Test Lane Canopy Signal
- Clean and inspect cabinet
- Clean and inspect TCP
- Inspect wiring

Yearly Maintenance:

- Test and adjust RFID read zone
- Clean and inspect VCARS
- Clean and inspect Lane Canopy Signal
- Clean and inspect antenna

The corrective maintenance activities will be performed in compliance with the following response and repair times:

Severity	Definition	Response Time	Resolution Time	Status Frequency Update
1=Critical	A major component of the Solution is in a non-responsive state and severely affects Users' productivity or operations that will result in immediate loss of revenue, closure of a lane, loss of audit data, or hazards to personnel or drivers.	One (1) Hour	Four (4) Hours	One (1) Hour
2=Urgent	Any component failure or loss of functionality not covered in Severity 1, which is hindering operations, such as, but not limited to: excessively slow response time; functionality degradation; error messages; backup problems; or issues affecting the use of a module or the data.	Two (2) Hours	Eight (8) Hours	Two (2) Hours
3=Important	Lesser issues, questions, or items that minimally impact the work flow or require a work around.	Four (4) hours	Seventy two (72) Hours	Four (4) Hours
4=Minor	Issues, questions, or items that don't impact the work flow. Issues that can easily be scheduled such as an upgrade or patch.	Twenty Four (24) hours	One (1) Month for an acceptable work around until final resolution	Weekly Status Call

County Responsibilities:

The County will apply security patch updates to Windows and SQL within 30 days of release. The County will maintain the firewall, including security and software updates. The County will maintain the Cisco (or equivalent) network hardware and software that is not related to the Lane System.

The County will act as the first line of support for any maintenance or technical support issues. A dedicated County staff member will field any issues identified by the County and will act as the direct point of contact to the Contractor. Only the dedicated staff member and two designated backup will have access to Contract support information.

Section 3 – Security Requirements

Within 60 days of Final System Acceptance, Contractor shall provide proof of Payment Card Industry (PCI) Attestation of Compliance for CAMS.

Section 4 – Inventory Requirements

Contractor will provide the County with an on-site inventory of spare parts sufficient for one complete lane per causeway within 30 days of Final System Acceptance.

APPENDIX B – PRICE AND PAYMENT SCHEDULE

Appendix B – Price and Payment Schedule

A. PAYMENT SCHEDULE

Scheduled Payment	Total Amount Due
Milestone 1 – Notice to Proceed	\$0.00
Milestone 2 – Project Planning	\$289,172.40
Milestone 3 – System Design and Development	\$240,977.00
Milestone 4 – Software Development and Testing	\$481,954.00
Milestone 5 – Equipment Procurement and Assembly	\$554,247.10
Milestone 6 – Site Installation and Testing	\$361,465.50
Milestone 7 – System Integration and Testing	\$240,977.00
Milestone 8 – Final System Acceptance	\$240,977.00
Maintenance and Technical Support Fees – Year 1	\$270,000.00
Maintenance and Technical Support Fees – Year 2	\$270,000.00
Maintenance and Technical Support Fees – Year 3	\$270,000.00
Maintenance and Technical Support Fees – Year 4	\$278,100.00
Maintenance and Technical Support Fees – Year 5	\$286,443.00
Escrow Fees – Year 1	\$3,175.00
Escrow Fees – Year 2	\$1,725.00
Escrow Fees – Year 3	\$1,725.00
Escrow Fees – Year 4	\$1,725.00
Escrow Fees – Year 5	\$1,725.00
Total For Initial 5 Year Term	\$3,794,388.00

B. PRICE BREAKDOWN – INITIAL IMPLEMENTATION

DESCRIPTION	PRICE
Lane System – inclusive of all hardware, devices, equipment and on-site inventory.	\$964,937.00

DESCRIPTION	PRICE
CAMS Software – Customer Service Software Component – Hardware/Software	\$190,756.00
CAMS Software – Customer Service Software Component – Installation	\$270,515.00
Professional Services – Project Management	\$209,552.00
Lane System Testing	\$57,969.00
Lane System Implementation/Installation	\$410,000.00
Annual Plan Development – Rickenbacker Resident Plan	\$9,135.00
Annual Plan Development – Rickenbacker Commuter Plan	\$9,135.00
Annual Plan Development – Rickenbacker Commuter-4 Plan	\$9,135.00
Annual Plan Development – Rickenbacker Recreational Plan	\$9,135.00
Annual Plan Development – Rickenbacker School Plan	\$9,135.00
Annual Plan Development – Rickenbacker For-Hire Plan	\$9,135.00
Annual Plan Development – Venetian Owner Plan	\$9,135.00
Annual Plan Development – Venetian Commuter Plan	\$9,135.00
Annual Plan Development – Venetian For-Hire Plan	\$9,135.00

DESCRIPTION	PRICE
Training – Including Labor or Materials as well as internal training on one dedicated resource	\$47,900.00
Interface Development – Including development, testing and implementation of FTE interface and Payment Gateway	\$115,926.00
Travel	\$60,000.00
Total	\$2,409,770.00

C. OPTIONAL YEARS TO RENEW FEE SCHEDULE

DESCRIPTION	PRICE
OTR 1 - Maintenance and Technical Support Fees – Year 6	\$295,036.30
OTR 1 – Escrow Fees – Year 6	\$1,776.80
OTR 1 - Maintenance and Technical Support Fees – Year 7	\$303,887.40
OTR 1 – Escrow Fees – Year 7	\$1,830.10
OTR 1 - Maintenance and Technical Support Fees – Year 8	\$313,004.00
OTR 1 – Escrow Fees – Year 8	\$1,885.00
OTR 1 - Maintenance and Technical Support Fees – Year 9	\$322,394.10
OTR 1 – Escrow Fees – Year 9	\$1,941.50
OTR 1 - Maintenance and Technical Support Fees – Year 10	\$332,065.90
OTR 1 – Escrow Fees – Year 10	\$1,999.70
Total for OTR 1	\$1,575,620.80
OTR 2 - Maintenance and Technical Support Fees – Year 11	\$342,027.90
OTR 2 – Escrow Fees – Year 11	\$2,059.70
OTR 2 - Maintenance and Technical Support Fees – Year 12	\$352,288.80
OTR 2 – Escrow Fees – Year 12	\$2,121.50

OTR 2 - Maintenance and Technical Support Fees – Year 13	\$362,857.40
OTR 2 – Escrow Fees – Year 13	\$2,185.20
OTR 2 - Maintenance and Technical Support Fees – Year 14	\$373,743.10
OTR 2 – Escrow Fees – Year 14	\$2,250.70
OTR 2 - Maintenance and Technical Support Fees – Year 15	\$384,995.40
OTR 2 – Escrow Fees – Year 15	\$2,318.30
Total for OTR 2:	\$1,826,843.00
OTR 3 - Maintenance and Technical Support Fees – Year 16	\$396,504.10
OTR 3 – Escrow Fees – Year 16	\$2,387.80
OTR 3 - Maintenance and Technical Support Fees – Year 17	\$408,399.20
OTR 3 – Escrow Fees – Year 17	\$2,459.40
OTR 3 - Maintenance and Technical Support Fees – Year 18	\$420,651.20
OTR 3 – Escrow Fees – Year 18	\$2,533.20
OTR 3 - Maintenance and Technical Support Fees – Year 19	\$433,270.70
OTR 3 – Escrow Fees – Year 19	\$2,609.20
OTR 3 - Maintenance and Technical Support Fees – Year 20	\$446,268.90
OTR 3 – Escrow Fees – Year 20	\$2,687.50
Total for OTR 3:	\$2,117,771.20
OTR 4 - Maintenance and Technical Support Fees – Year 21	\$459,656.90
OTR 4 – Escrow Fees – Year 21	\$2,768.10
OTR 4 - Maintenance and Technical Support Fees – Year 22	\$473,446.60
OTR 4 – Escrow Fees – Year 22	\$2,851.20
OTR 4 - Maintenance and Technical Support Fees – Year 23	\$487,650.00
OTR 4 – Escrow Fees – Year 23	\$2,936.70
OTR 4 - Maintenance and Technical Support Fees – Year 24	\$502,279.50

OTR 4 – Escrow Fees – Year 24	\$3,024.80
OTR 4 - Maintenance and Technical Support Fees – Year 25	\$517,347.90
OTR 4 – Escrow Fees – Year 25	\$3,115.50
Total for OTR 4:	\$2,445,077.20

D. OPTIONAL PROFESSIONAL SERVICES

Service	Proposed Hourly Rate
Project Manager	\$ 232
Programmer	\$ 203
Junior Programmer	\$ 155
Web Developer	\$ 184
Trainer	\$ 126
System Administrator	\$ 203
Database Administrator	\$ 203
On-Site Training (Per Day)	\$ 222

Note: Compensation for Optional Professional Services shall be based on the projects assigned. Contractor shall use agreed upon hourly rates to calculate the not-to-exceed cost statement required for each project.

APPENDIX C – IMPLEMENTATION TIMELINE

Appendix C – Implementation Timeline

Milestones	Duration
Milestone 1 – Notice to Proceed	0 days
Milestone 2 – Project Planning	20 days
Milestone 3 – System Design and Development	45 days
Milestone 4 – Software Development and Testing	40 days
Milestone 5 – Equipment Procurement and Assembly	80 days
Milestone 6 – Site Installation and Testing	40 days
Milestone 7 – System Integration and Testing	10 days
Milestone 8 – Final System Acceptance	10 days
Total	225 Days

APPENDIX D – DELIVERABLE ACCEPTANCE FORMS

**Deliverable Acceptance Form
Milestone 2**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 2 – Project Planning

Deliverables	Duration	Resources/Staff
Project Management Plan	Within 20 days	
Project Initiation Conference	Within 20 days	
Detailed Design Document – Initial Draft	Within 20 days	
Design Review Meeting	Within 20 days	

Deliverable Date: _____

Accepted Unconditionally: Yes / No

Accepted Conditionally: Yes / No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

**Deliverable Acceptance Form
Milestone 3**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 3 – System Design and Development

Deliverables	Duration	Resources/Staff
Quality Management Plan	Within 45 Days	

Deliverable Date: _____

Accepted Unconditionally: ___ Yes / ___ No

Accepted Conditionally: ___ Yes / ___ No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

**Deliverable Acceptance Form
Milestone 4**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 4 – Software Development and Testing

Deliverables	Duration	Resources/Staff
Development of Interface to FTE	Within 40 Days	
Development of Interface to Payment Gateway	Within 40 Days	
Development of Annual Pass Plans	Within 40 Days	
Interface Control Document	Within 40 Days	

Deliverable Date: _____
 Accepted Unconditionally: ___ Yes / ___ No
 Accepted Conditionally: ___ Yes / ___ No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

**Deliverable Acceptance Form
Milestone 5**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 5 – Equipment Procurement and Assembly

Deliverables	Duration	Resources/Staff
Equipment Procurement and Assembly	Within 80 Days	

Deliverable Date: _____
 Accepted Unconditionally: ___ Yes / ___ No
 Accepted Conditionally: ___ Yes / ___ No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

**Deliverable Acceptance Form
Milestone 6**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 6 – Site Installation and Testing

Deliverables	Duration	Resources/Staff
System Installation Plan	Within 40 Days	
Lane System Installation	Within 40 Days	

Deliverable Date: _____

Accepted Unconditionally: ___ Yes / ___ No

Accepted Conditionally: ___ Yes / ___ No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

**Deliverable Acceptance Form
Milestone 7**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 7 – System Integration and Testing

Deliverables	Duration	Resources/Staff
Test Plan	Within 10 Days	
Site Acceptance Testing	Within 10 Days	
Test Procedures Document	Within 10 Days	
Site Acceptance Test Report	Within 10 Days	
Commission Testing	Within 10 Days	

Deliverable Date: _____

Accepted Unconditionally: Yes / No

Accepted Conditionally: Yes / No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

**Deliverable Acceptance Form
Milestone 8**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and TransCore LP. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

Milestone 8 – Final System Acceptance

Deliverables	Duration	Resources/Staff
User Training – 1 Day Session	Within 10 Days	
User Training – 2 Day Session	Within 10 Days	
User Training – Executive Overview	Within 10 Days	
Commission Test Report	Within 10 Days	

Deliverable Date: _____

Accepted Unconditionally: ___ Yes / ___ No

Accepted Conditionally: ___ Yes / ___ No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

Delivered By:

Signature: _____

Name: _____

Date: _____

Accepted By:

Signature: _____

Name: _____

Date: _____

APPENDIX E

THREE-PARTY ESCROW AGREEMENT

AMONG

TRANSCORE, LP, MIAMI-DADE COUNTY AND ESCROW ASSOCIATES, LLC

Three-Party Escrow Agreement

This Technology Escrow Agreement ("Agreement") among Escrow Associates, LLC ("Escrow Associates"), Miami-Dade County ("Beneficiary") and TransCore LP ("Depositor") is effective on the date of the parties' signature below, whichever is later.

Recitals

Whereas, Depositor licenses technology to Beneficiary in the form of software object code (the "Software") pursuant to Contract No. RFP861. The source code is defined as the Software, including all incremental releases and upgrades as well as any customizations or Developed Works as defined in Contract No. RFP861 created for Beneficiary, in source code form, including all relevant documentation and instructions necessary to maintain, duplicate, and compile the source code (the "Source Code"). The Source Code is necessary to maintain and support the Software as defined in Contract No. RFP861. The Source Code and any other components Depositor provides which are related to building and maintaining the Software identified on Exhibit B (as the same may be modified herein) are hereafter referred to collectively as the deposit materials ("Deposit Materials").

Whereas, the purpose of this Agreement is to protect Depositor's ownership and confidentiality of the Deposit Materials and to protect Beneficiary's legitimate use of the Deposit Materials as defined by the Contract No. RFP861. Further, this Agreement is intended to provide for certain circumstances under which Beneficiary shall be entitled to receive the Deposit Materials held in escrow by Escrow Associates to continue its legitimate use and support of the Software.

Whereas, Beneficiary and Depositor hereby designate and appoint Escrow Associates as the escrow agent under this Agreement. Escrow Associates hereby accepts such designation and appointment and agrees to carry out the duties of escrow agent pursuant to the terms and provisions of this Agreement. Escrow Associates is not a party to, and is not bound by, any agreement that might be evidenced by, or might arise out of, any prior or contemporaneous dealings between Depositor and Beneficiary other than as expressly set forth herein.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Deposit Materials

(a) Initial Deposit - Depositor shall submit the initial Deposit Materials to Escrow Associates within sixty (60) days of the Effective Date or sixty (60) days after development of the Deposit Materials is completed. Depositor shall complete and deliver with all Deposit Materials a form as shown herein as Exhibit B, which shall then become part of this Agreement. Escrow Associates shall notify Beneficiary within ten (10) business days of receipt of the Initial Deposit Materials. Escrow Associates has no obligation with respect to the initial Deposit Materials for delivery, functionality, completeness, performance or initial quality.

(b) Deposit Material Updates - Depositor shall submit updates to the initial Deposit Materials to Escrow Associates within sixty (60) days of any material modification, upgrade or new release of the Software. Depositor shall complete and deliver with all updates to the Deposit Materials an amended Exhibit B form, which shall additionally become part of this Agreement. Escrow Associates shall notify Beneficiary within ten (10) business days of receipt of updates to the Deposit Materials. Escrow Associates has no obligation with respect to the updates to the Deposit Materials for delivery, functionality, completeness, performance or initial quality.

(c) Electronic Deposit - In the event Depositor elects to utilize electronic means to transfer the Deposit Materials to Escrow Associates, whether through a service provided by Escrow Associates or other means, Escrow Associates shall not be liable for transmissions that fail in part or in whole, are lost, or are otherwise compromised during transmission. Furthermore, Escrow Associates shall not be liable for any

subsequent services that may or may not be delivered as a result of a failed transfer. Escrow Associates shall not be liable to Depositor or Beneficiary for any encrypted update, or any part thereof, that is transmitted over the Internet to Escrow Associates' FTP Site but is not received in whole or in part, or for which no notification of receipt is given.

(d) Duplication of Deposit Materials - Escrow Associates may duplicate the Deposit Materials only as necessary to comply with the terms of this Agreement. Escrow Associates at its sole discretion may retain a third party for the purpose of duplicating the Deposit Materials only as necessary to comply with the terms herein. All duplication expenses shall be borne by the party requesting duplication.

2. Term

(a) Term of Agreement – The term of this Agreement shall be for a period of one (1) year from the Effective Date. At the end of the initial and each subsequent term, this Agreement shall automatically renew for an additional one (1) year term unless terminated according to the terms herein.

(b) Termination of Agreement – This Agreement may be terminated by written mutual consent of Depositor and Beneficiary provided that one of the following occurs:

- i. Contract No. RFP861 has been terminated or has expired, or
- ii. All Deposit Materials have been released in accordance with the terms hereof.

(c) Termination for Non-Payment – In the event that full payment of any or all fees due to Escrow Associates under this Agreement have not been received by Escrow Associates within thirty (30) days of the date payment is due, Escrow Associates will notify all parties hereto of the delinquent fees. If the delinquent fees are not received within thirty (30) days of the delinquency notification, Escrow Associates shall have the right to terminate this Agreement and destroy the Deposit Materials.

(d) Return of Deposit Materials – Upon termination of this Agreement for any reason other than in the event all Deposit Materials have been released in accordance with the terms of Section 6 herein, Escrow Associates shall return the Deposit Materials to Depositor via commercial courier to the address of Depositor shown in this Agreement, provided that all fees due Escrow Associates are paid in full. If two (2) attempts to return Deposit Materials via commercial courier to Depositor fail or Depositor does not accept the Deposit Materials, Escrow Associates shall destroy the Deposit Materials.

3. Fees

(a) Payment - Upon receipt of signed Agreement or initial Deposit Materials, whichever comes first, Escrow Associates will submit an initial invoice to Depositor for amount shown on Exhibit A attached hereto. If payment is not received, Escrow Associates shall have no obligation to perform its duties under this Agreement. Depositor agree to pay to Escrow Associates all additional fees for services rendered related to this Agreement as shown on Exhibit A. The fee for any service that is not expressly covered in Exhibit A shall be established by Escrow Associates upon request. All fees are due in advance of service and are non-refundable. Escrow Associates may amend Exhibit A at any time upon sixty (60) days written notice to Beneficiary and Depositor.

(b) Currency - All fees are in U.S. dollars and payment must be rendered in U.S. dollars unless otherwise agreed to in advance by Escrow Associates.

4. Indemnification - With the exception of gross negligence, willful misconduct or intentional misrepresentation on behalf of Escrow Associates, Depositor shall indemnify and hold harmless Escrow Associates and each of its directors, officers, agents, employees, members and stockholders ("Escrow Associates Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted against any Escrow Associates Indemnitee in connection with this Agreement or the performance of Escrow Associates or any Escrow Associates Indemnitee hereunder.

5. Depositor's Representations and Warranties

(a) The Deposit Materials as delivered to Escrow Associates are a copy of Depositor's proprietary information corresponding to that described in Exhibit B and are capable of being used to generate the Software. Depositor shall update the Deposit Materials as provided for in the Contract No. RFP861 and/ or as provided for herein. The Deposit Materials shall contain all information necessary to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Deposit Materials.

(b) Depositor owns the Deposit Materials and all intellectual property rights therein free and clear of any liens, security interests, or other encumbrances.

6. Release of Deposit Materials

(a) Release - The Deposit Materials, including any copies thereof, will be released to Beneficiary after the receipt of the written request for release only in the event that the release procedure set forth in Section 6 is followed and:

- i. Depositor notifies Escrow Associates in writing to effect such release; or
- ii. The Escrow Associates shall release the Deposit Materials under this Agreement to Beneficiary upon Beneficiary providing written request to Escrow Associates in the event of occurrence of the failure of the Depositor to provide the agreed upon services under the Depositor's Agreement for the SunPass /Toll-By-Plate Electronic Tolling Solution with the Beneficiary based of any of the following:
 - a. presentation to the Escrow Associates of an endorsed file copy of a voluntary petition in bankruptcy naming Depositor as debtor;
 - b. Depositor otherwise goes out of business, including exiting the electronic toll collection business;
 - c. any proceeding seeking involuntary reorganization, arrangement, bankruptcy, readjustment, liquidation, dissolution, or similar relief as filed against Depositor under any present or future statute, law, or regulation which is admitted or not dismissed within sixty (60) days or if any trustee, receiver or liquidator of all or substantial part of its business, assets or properties is appointed with or without Depositor's consent or acquiescence in such appointment and is not vacated within sixty (60) days; or
 - d. Contract No. RFP861 for the SunPass/Toll-By-Plate Electronic Tolling Solution with the Beneficiary is judged by a Court of competent jurisdiction to be terminated in whole for cause/default of Depositor for an uncured failure to achieve Final System Acceptance or other uncured event of default subsequent to Final System Acceptance.
 - e. Upon the expiration or completion or conclusion of the full term of Contract No. RFP861 for the SunPass /Toll-By-Plate Electronic Tolling Solution with the Beneficiary, inclusive of all options, renewals and extensions. For the avoidance of doubt, a termination of the foregoing Agreement, in whole or in part, without cause, convenience, suspension, cancellation, or the expiration or completion or conclusion of the initial Agreement term will not result in the release of Deposit Materials.
 - f. Depositor discontinues the Software, including the removal of resources dedicated to the resolution of problems or ongoing development of the Software.

(b) Depositor Request for Release - If the provisions of Section 6(a)(i) are met, Escrow Associates will release the Deposit Materials to Beneficiary within ten (10) business days.

(c) Beneficiary Request for Release - If the provisions of Section 6(a)(ii) are met, Escrow Associates will within ten (10) business days forward a complete copy of the request to Depositor. Depositor shall have thirty (30) days to make any and all objections to the release known to Escrow Associates in writing. If

after thirty (30) days Escrow Associates has not received any written objection from Depositor, Escrow Associates shall release the Deposit Materials to Beneficiary as instructed by Beneficiary.

(d) Depositor Objection to Release - Should Depositor object to the request for release by Beneficiary in writing, Escrow Associates shall notify Beneficiary in writing within ten (10) business days of Escrow Associates receipt of said objection and shall notify both parties that there is a dispute to be resolved pursuant to Section 7 (Arbitration) of this Agreement. Escrow Associates will continue to hold the Deposit Materials without release pending (i) joint instructions from Depositor and Beneficiary; (ii) dispute resolution according to Section 7 (Arbitration); or (iii) order from a court of competent jurisdiction.

(e) Grant of License to Deposit Materials – As of the Effective Date, Depositor hereby grants to Beneficiary, a non-exclusive, perpetual, paid in full license, to install, use, copy, publicly perform and digitally perform, modify and create derivative works from the Deposit Materials delivered by Escrow Associates under this Section, for the sole purpose of continuing the benefits afforded to Beneficiary under this Agreement, including the development of patches and upgrades solely for Beneficiary’s internal use, as more fully described in Contract No. RFP861.

(f) Restrictions on Use – The following restrictions shall apply to Deposit Materials delivered to Beneficiary: (i) Beneficiary shall not copy the Deposit Materials other than as necessary for installation on Beneficiary’s equipment and for backup copies on Beneficiary’s equipment, (ii) Beneficiary will keep the Deposit Materials in a secure, safe place when not in use, (iii) Beneficiary agrees to use the Deposit Materials under carefully controlled conditions in accordance with, and for the purposes of, this Agreement, (iv) Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials in accordance with Section 8, and (v) Beneficiary agrees to treat, handle, and store the Deposit Materials in the same manner and with the same care as it treats its most sensitive and valuable trade secrets.

7. Arbitration - Except as expressly provided for herein, any dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled in Atlanta, Georgia by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules [including the Emergency Interim Relief Procedures], and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Depositor agrees reimburse Escrow Associates for any and all costs incurred as a result of any Arbitration including attorney’s fees. The arbitrator(s) shall award attorneys’ fees and costs to the prevailing party.

8. Confidentiality – Except as otherwise required to carry out its duties under this Agreement, Escrow Associates shall hold in strictest confidence and not permit any third party access to nor otherwise use, disclose, transfer or make available the Deposit Materials except as otherwise provided herein, unless consented to in writing by Depositor.

9. Limitation of Liability - Under no circumstance shall Escrow Associates be liable for any special, incidental, or consequential damages (including lost profits) arising out of this Agreement even if Escrow Associates has been apprised of the possibility of such damages. In performing any of its duties hereunder, Escrow Associates shall not incur any liability to any party for any damages, losses, or expenses, except for willful misconduct or gross negligence on the part of Escrow Associates, and it shall not incur any liability with respect to any action taken or omitted in reliance upon any written notice, request, waiver, consent, receipt or other document which Escrow Associates in reasonably good faith believes to be genuine.

10. Notices – Notices shall be deemed received on the third business day after being sent by first class mail, or on the following day if sent by commercial express mail. All notices under this Agreement shall be in writing and addressed and sent to the person(s) listed in the space provided below:

Depositor

Company: _____
Contact: _____ Title: _____
Address: _____
City, State, Zip: _____

Telephone: _____ Fax: _____
Email: _____

Billing Contact: _____ Title: _____
Address: _____
City, State, Zip: _____
Telephone: _____ Fax: _____
Email: _____
Purchase Order (if applicable): _____

Beneficiary

Miami-Dade County
2525 NW 62nd Street
5th Floor
Miami, Florida 33147

Contact: Aneisha Daniel and Michael Bauman
Phone: (305) 514-6630 / (305) 854-2468
E-mail: adaniel@miamidade.gov / mikeb@miamidade.gov

Escrow Associates, LLC
Attn: Contracts Administration
8302 Dunwoody Place, Suite 150
Atlanta GA 30350
Telephone: 800-813-3523
Fax: 770-518-2452
Email: info@escrowassociates.com

11. Miscellaneous

(a) **Counterparts** - This Agreement may be executed in any number of multiple counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(b) **Entire Agreement** - This Agreement supersedes all prior and contemporaneous letters, correspondences, discussions and agreements among the parties with respect to all matters contained herein, and it constitutes the sole and entire agreement among them with respect thereto.

(c) **Limitation of Effect** - This Agreement pertains strictly to the escrow services provided for herein and does not modify, amend or affect any other contract or agreement of one or more of the parties. The terms and provisions of Contract No. RFP861, as the same may be physically modified by the terms and provisions hereof, shall continue in full force and effect and be binding upon and inure to the benefit of the parties hereto, their legal representatives, successors and assigns.

(d) **Modification** - This Agreement shall not be altered or modified without the express written consent of all parties.

(e) **Bankruptcy Code** - This Agreement shall be considered an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by the parties) to Contract No. RFP861 pursuant to Title 11 United States Bankruptcy Code Section 365(n).

(f) **Survival of Terms** - All obligations of the parties intended to survive the termination of this Agreement, including without limitation, are the provisions of Sections 2 (Term), 3 (Fees), 4 (Indemnification), 7 (Arbitration), 9 (Limitation of Liability), and 11 (Miscellaneous) which shall survive the termination of this Agreement for any reason.

(g) **Governing Law** - This Agreement shall be governed by the laws of the state of Florida.

(h) Time of the Essence - Time is of the essence in this Agreement.

(i) Successors and Assigns - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties, provided, however, that Beneficiary shall have no right to assign any rights hereunder or with respect to the Deposit Materials except as permitted with respect to assignment of Beneficiary's rights under Contract No. RFP861.

(Signatures are on following page. Remainder of the page intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized agents as of the Effective Date.

Depositor

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

Contract Negotiated by: _____

Negotiator Telephone: _____

Beneficiary

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

Contract Negotiated by: Beth Goldsmith

Negotiator Telephone: 305-375-4417

Escrow Associates, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit A
Schedule of Fees

(Initial Year / Renewal)

Three-Party Agreement

\$3175 / \$1725

Three-Party escrow agreement includes:

- Contract review & agreement drafting assistance
- Customization & set-up of agreement
- Twelve updates to escrow deposit material per year
- FTP depositing services (up to 750 MB / Update)
- Online account management
- Notifications to all parties
- Deposit account w/ state of the art media vault storage

Exhibit B
Deposit Materials

Please complete Exhibit B form and enclose a copy with the Deposit Materials or contact us for details on electronic depositing.

Attn: Vault Manager
Escrow Associates, LLC
8302 Dunwoody Place, Suite 150
Atlanta GA 30350
1-800-813-3523

Company Name: _____

Escrow Associates Account Number: _____

Product Name & Version: _____

Three-Party Agreement

New Deposit Account

Two-Party Agreement

Update to existing Deposit Account

Please list specific Beneficiaries under a Two-Party Agreement associated with this product/ update or check here to apply to all Beneficiaries:

Media Description:

Quantity	Type	Description / Label
_____	DVD/CDR	_____
_____	DAT/DDS Tape	_____
_____	Documentation	_____
_____	Other	_____

Deposit Prepared by:

Deposit Accepted by (Escrow Associates):

Signed: _____

Signed: _____

E-mail: _____

Name: _____

Date: _____

Date: _____

Credit Card/Wire Transfer Payment Form

CREDIT CARD PAYMENT INFORMATION	
Company Name / Account Number:	
Credit Card Number:	
Expiration Date:	
Card Type (Amex / Visa / etc.):	
Billing Name:	
Billing Address:	
Billing City State Zip:	
Transaction Amount:	
Escrow Associates Invoice Number:	
<p>If you would like Escrow Associates, LLC to charge the above credit card on an annual basis for this fee, please sign below. If at any time you choose to use an alternate method of payment, please notify us (in writing) at least thirty (30) days prior to the escrow account renewal date.</p>	
Client Signature: _____	Title: _____
Print Name: _____	Date: _____

WIRE TRANSFER PAYMENT INFORMATION	
Company Name & Address:	Escrow Associates, LLC 8302 Dunwoody Place, Suite 150 Atlanta GA 30350
Bank Name & Address:	Fidelity Bank 225 Sandy Springs Circle Atlanta, GA 30328
Account Number:	03025643
Routing Number	061102400

Please contact us directly with any questions! Thank you for your business!