

Date: March 2, 2021

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

Agenda Item No.8(F)(11)

From: Daniella Levine Cava
Mayor

Resolution No. R-144-21

Subject: Recommendation for Approval to Award RFP-01229, Private Attorney Services

Recommendation

It is recommended that the Board of County Commissioners (Board) approve competitive contract award, *Contract No. RFP-01229; Private Attorney Services* for the Public Housing and Community Development Department (PHCD). This contract will replace competitively solicited contract *RFP-00042, Private Attorney Services*, which was awarded by the Board under Resolution No. R-751-14 for a three-year term, with three, one-year options to renew.

The contract provides for the services of private attorneys to pursue evictions against residents for criminal activity, drug activity, violent or destructive behavior, non-payment of rent and any other violations of their lease. The County is a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. §1437 et seq., as amended) which owns and operates, through PHCD, approximately 9,200 units of public housing in Miami-Dade County.

The primary mission of the public housing program is to provide decent, safe, and sanitary housing to extremely low-income families, the elderly and the disabled. To achieve this mission, it is sometimes necessary for the County to evict residents for violations of their lease terms. The County pursues approximately 140 evictions per year, in accordance with the federal laws and regulations governing the public housing program, Chapter 83, Florida Statutes (Landlord/Tenant Act), the County's adopted Admissions and Continued Occupancy Policy, and the public housing lease.

The County issued a competitive Request for Proposal on June 9, 2020 to obtain proposals from qualified Proposers with the experience and expertise in providing legal services for evictions and related services for public housing agencies. A total of 3,631 vendors were notified, of which, 53 viewed the solicitation and three responded to the same. The award is recommended to De Leon & De Leon, P.A., the highest ranked responsive and responsible proposer. De Leon & De Leon, P.A. has a local office in Miami-Dade County.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the initial three-year term is \$1,200,000. The funding source is federally allocated public housing operating subsidy. No County general funds are involved.

Should the County choose to exercise, at its sole discretion, the two-year option to renew, the estimated cumulative value will be \$2,000,000. The current contract, *RFP-00042*, is valued at \$2,600,000 for a six-year and six-month term, and expires on March 31, 2021. The allocation under the contract is the same as the current contract on an annual basis.

Department	Allocation	Funding Source	Contract Manager
Public Housing and Community Development	\$2,000,000	Federal Funds	Indira Rajkumar-Futch
Total:	\$2,000,000		

Track Record/Monitor

Pearl Bethel of the Internal Services Department is the Procurement Contracting Manager.

Delegated Authority

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

Vendor Recommended for Award

An RFP was issued under full and open competition on June 9, 2020. Three proposals were received in response to the solicitation.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
De Leon & De Leon, P.A.	44 West Flagler Street Suite 2250 Miami FL	Same	7	Neil De Leon
			100%	

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

Vendors Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
CAVA Law, LLC	Yes	Evaluation Scores/Ranking
Edelboim Liberman Revah Oshinsky PLLC,	Yes	Deemed non-responsive by the County Attorney's Office (opinion attached)

Due Diligence

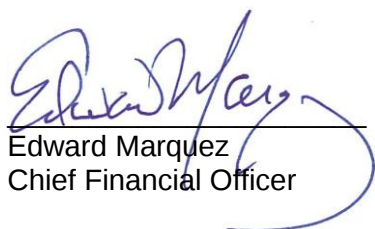
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced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

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and reviewing the solicitation with the user department. The scope of services was updated to remove services no longer required and to add services where needed.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise Selection Factor and Local Preference do not apply.
- The Living Wage does not apply.
- Section 3 of the Housing and Urban Development Act of 1968 Compliance applies.

Attachment


Edward Marquez
Chief Financial Officer

Date: July 21, 2020

To: Coleen Christie
Procurement Contracting Officer
Internal Services Department

From: Oren Rosenthal
Assistant County Attorney

Subject: Responsiveness Opinion - RFP No. 01229 – Private Attorney Services

You have asked this office for a responsiveness opinion on whether proposals submitted by Edelboim Liberman Revah Oshinsky PLLC (“Edelboim”) and DeLeon & DeLeon, P.A. (“DeLeon”), can be considered responsive to the above Solicitation. For the reasons set forth below, we conclude that Edelboim is non responsive for failing to provide a complete solicitation packet including required HUD solicitation response forms and DeLeon is responsive as all exceptions were taken in accordance with the instructions of the Solicitation and are do not condition their proposal.

FACTS

We rely on your request for a responsiveness opinion dated July 20, 2020 and the proposals from Edelboim and DeLeon for the facts underlying this opinion. You report that on July 1, 2020, three proposals were received for the subject solicitation and subsequently reviewed for responsiveness.

According to your request, Edelboim, did not submit a technical proposal or complete the forms required by the U.S. Department of Housing and Urban Development (“HUD”) for the submission of proposals subject to HUD regulation.

Additionally, you report that another proposer, DeLeon, took four exceptions to the solicitation in response to question 22 of the Solicitation. You note, however, that each of the exceptions taken acknowledge that those exceptions are “Subject to contract award and negotiations” and that none of the exceptions condition their proposal on the acceptance of the exceptions.

DISCUSSION

The failure of Edelboim to submit a technical proposal or complete the forms required by HUD for the submission of proposals subject to HUD regulations renders their proposal not responsive. In general, a proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from proposal to proposal. Florida courts have used a two part test to determine if a specific noncompliance in a proposal would constitute a substantial and, thus, nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a

position of advantage over other proposers. See Glatstien v. City of Miami, 399 So. 2d 1005 (Fla. 3d DCA 1981).

Here, Edelboim's failed to execute the identified HUD forms. The HUD forms required to be submitted with the proposals provide certifications and assurances that the federal government requires to assure the contracting entity that any future contract will be performed in accordance with the terms of the Solicitation and the vendor's proposal. The absence of which deprives the County of the very types of assurances required by the court in *Glatstien* and similar cases. Moreover, even if Edelboim were to be considered responsive, the failure to submit a technical proposal would preclude Edelboim's eligibility to receive a score on the bulk of the selection criteria available. As such Edelboim is not responsive.

DeLeon, on the other hand, complied with the requirements of the solicitation and indicated exceptions that are not conditions of their bid, but rather "subject to contract award and negotiations." This is precisely the method provided for in the Solicitation to identify items that the proposer identifies as requiring further negotiation and consideration. Such a process maintains the proposal's viability notwithstanding their request to discuss certain provisions during negotiations. As DeLeon complied with the Solicitation, their bid is responsive.

/s Oren Rosenthal
Oren Rosenthal



MEMORANDUM

(Revised)

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

DATE: March 2, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(11)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(11)
3-2-21

RESOLUTION NO. _____ R-144-21

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01229 TO DE LEON AND DE LEON, P.A. FOR THE PURCHASE OF PRIVATE ATTORNEY SERVICES FOR THE PUBLIC HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$2,000,000.00 OVER THE INITIAL THREE-YEAR TERM AND TWO-YEAR OPTION TO RENEW TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION, RENEWAL AND EXTENSION PROVISIONS PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves award of Contract No. RFP-01229 to De Leon and De Leon, P.A. for purchase of private attorney services for the Public Housing and Community Development Department, in substantially the form attached and made a part hereof, in a total amount not to exceed \$2,000,000.00 for the initial three-year term and two-year option to renew term, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions of the contract, including any cancellation, renewal and extension provisions pursuant to 2-8.1 of the Code of Miami-Dade County and Implementing Order 3-38.

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

Jose "Pepe" Diaz, Chairman	aye	
Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	aye	Keon Hardemon
Sally A. Heyman	aye	Danielle Cohen Higgins
Eileen Higgins	aye	Joe A. Martinez
Kionne L. McGhee	aye	Jean Monestime
Raquel A. Regalado	aye	Rebeca Sosa
Sen. Javier D. Souto	aye	

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



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

HARVEY RUVIN, CLERK

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in dark ink, appearing to be "OR" followed by a stylized flourish.

Oren Rosenthal

Private Attorney Services
Contract No. RFP 01229

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between De Leon & De Leon, P.A. a corporation organized and existing under the laws of the State of Florida, having its principal office at 44 West Flagler Street, #2250, Miami, FL 33130 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the state of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County") (collectively, the "Parties"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide private attorney services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 01229 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated June 27, 2020, 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 private attorney services and related services for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 01229 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Manager" to mean the County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- c) The word "Contractor" to mean De Leon & De Leon, P.A. and its permitted successors.
- d) The word "Days" to mean calendar days.
- e) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- f) 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 Project Manager.
- g) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- h) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- i) 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.
- j) 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 Agreement.
- k) The words "Extra Work" or "Additional Work" to mean additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- l) The words "Flat Rate" to mean a rate that is not an hourly rate but includes the costs of all steps necessary to accommodate the tasks in the Scope of Services.

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) Articles 1 through 45 of the Agreement, 2) the Scope of Services (Appendix A), 3) the County's RFP No. 01229 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in the Contract 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 AND RENEWAL

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the thirty-sixth (36) month. The County, at its sole discretion, may renew this Contract for one (1) additional two-year period. The County may extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

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

(1) To the County

- a) to the Project Manager:

Miami-Dade County
Miami-Dade Public Housing and Community Development
Attention: Michael Liu, Executive Director
701 NW 1st Court, 16th Floor
Miami, Florida 33136-3914

Phone: (786) 469-4106
E-mail: mliu88@miamidade.gov

and,

b)

- c) To the Contract Manager:

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

(2) To the Contractor

De Leon & De Leon, P.A.
Attention: Neil A. De Leon
44 West Flagler Street, #2250
Miami, FL 33130
Phone: (305) 374-5493
E-mail: NAD@DeLeonDeLeon.com

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with Appendix B – Form1-Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

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

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the initial term of the Contract, including any extensions thereof, as indicated in Appendix B – Form1-Price Schedule. Prices will be negotiated at the time of contract renewal should the County exercise its option to renew. However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made

within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

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

E-mail (preferred):

PHCDpayables@miamidade.gov

Mail to:

Miami-Dade Public Housing & Community Development
Accounts Payable Section
701 NW 1st Court, 16th Floor
Miami, FL 33136-3914

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

ARTICLE 10. INDEMNIFICATION AND INSURANCE

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

The Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

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

- B. Commercial General Liability in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$2,000,000 per claim.
- E. **Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.**

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

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

OR

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

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

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.

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

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

The Contractor shall assure that the Certificates of Insurance required in conjunction with this

Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES OF THE CONTRACTOR

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

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

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 14. DISPUTE RESOLUTION PROCEDURE

- 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 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.
- f) This Article will survive the termination or expiration of this Agreement.

ARTICLE 15. MUTUAL OBLIGATION

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.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 17. AUDITS

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

Pursuant to Section 2-481 of the Code of Miami-Dade County, 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 within five (5) business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the

Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 20. SUBCONTRACTUAL RELATIONS

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

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

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

ARTICLE 22. SEVERABILITY

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

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) This Agreement may be terminated for cause by the County for reasons including, but not limited to, the following: (i) the Contractor commits an Event of Default (as defined below in Article 24); or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a)(ii) above, the County may, in its sole discretion, also 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 attorneys' fees.
- d) The foregoing notwithstanding, if the Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, the Contractor 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 Code of Miami-Dade County.
- e) In the event that the County exercises its right to terminate this Agreement under this Article 23, 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.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default is a material breach of this Agreement by the Contractor, including but not limited to:
 - 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; or
 - viii. the Contractor fails to comply with Article 39 below.
- 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/or a material breach of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, terminating this Agreement or taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County terminates this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If the County determines, in its sole discretion, that an Event of Default has occurred, the County may, but is not required to, so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County deems 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. If the County chooses to issue a Default Notice, the Default Notice shall specify the date the Contractor shall discontinue the Services and stop work (i.e., the Effective Termination Date).

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

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

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

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

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited

to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorneys' fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 28. CONFIDENTIALITY

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

unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

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

ARTICLE 29. PROPRIETARY INFORMATION

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

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

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

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

ARTICLE 30. PROPRIETARY RIGHTS

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

written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement 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 Code of Miami-Dade County)

2. Miami-Dade County Employment

Disclosure Affidavit (Section

- 2.8.1(d) (2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
 4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Code of Miami-Dade County)
 5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)
 6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
 7. **Miami-Dade County Code of Business Ethics Affidavit**
(Sections 2-8.1(i), 2-11.1(b) (1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
 8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)
 9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
 10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
 11. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)
 12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
 13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution R-919-18)
 14. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)
 15. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)
 16. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)
 17. **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
 18. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
 19. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business

enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

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

20. Antitrust Laws

b) Conflict of Interest and Code of Ethics

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

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

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

Miami-Dade County Inspector General Review

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

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

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

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

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

As applicable, the Contractor shall comply, subject to applicable professional standards, with the provisions of any and all applicable federal, state and County orders, statutes, ordinances, rules and regulations which may pertain to the Services, including, but not limited to:

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246,"Equal Employment Opportunity", as amended by Executive Order 11375, and implementing regulations at 41 C.F.R. part 60.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act

(33 U.S.C. 1251-1387), as amended.

- d) The Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by the Department of Labor regulations (29 CFR Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- o) Any other laws prohibiting wage rate discrimination based on sex.

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

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

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity

or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above

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

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

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

ARTICLE 38. GOVERNING LAW

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

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

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

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 40. FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP")

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

ARTICLE 41. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality

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

ARTICLE 42. LEGAL SERVICES CONTRACT PROTOCOL

- a) During the pendency of the legal services engagement, Contractor shall not, without HUD's approval, represent any officer or employee of County, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to the County's operations.
- b) Contractor has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by the Contractor cannot be inconsistent with the foregoing obligation. Specifically, Contractor shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to County records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that would otherwise be available to the County. HUD requires public housing agencies to provide HUD, GAO, or the officers and agents of HUD and GAO, with "full and free" access to all their books, documents, papers and records. See 24 CFR. §85.42(e) (1); HUD Handbook 7460.7 REV-2, §1-2(B)(2).
- c) The County and Contractor shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to Contractor's engagement. Such records constitute "PHA records" and are subject to section c, above.
- d) If HUD or the County determines that Contractor is violating any provision of this Article it shall timely notify Contractor of such violation. Contractor will have forty-eight (48) hours following its receipt of the notice of violation to cease and desist from further violation of the addendum. If Contractor fails to adequately cure the noticed violation within forty-eight (48) hours: (A) HUD, in its discretion, may demand that the County terminate this Agreement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) the County in its discretion, may terminate this Agreement for breach. Additionally, HUD may sanction the Contractor pursuant to 24 CFR. Part 24.
- e) Should any part, term, or provision of this Article be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions of this Agreement shall not be affected.

ARTICLE 43. LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

- a) Definitions. As used in this article:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- i. The awarding of any Federal contract;
- ii. The making of any Federal grant;
- iii. The making of any Federal loan;
- iv. The entering into of any cooperative agreement; and
- v. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement

“Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

- i. An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- ii. A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- iii. A special Government employee as defined in section 202, title 18, U.S.C.; and
- iv. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 45, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Recipient” includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of

such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

b) Prohibition.

- i. Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions; the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. The prohibition does not apply as follows:
 - (1) Agency and legislative liaison by Own Employees.
 - (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
 - (b) For purposes of paragraph (b) (i) (1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited

proposal prior to its official submission; and

- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by subdivision (b) (ii) (1) (a) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (a) The prohibition on the use of appropriated funds, in subparagraph (b) (i) of this clause, does not apply in the case of:
- i. a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action
 - ii. Any reasonable payment to a person, other than an officer or employee of a person, requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award document.
- i. Selling activities by independent sales representatives.
- (d) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter.
- i. Discussing with an agency (including individual demonstration) the qualities and characteristics of the Operson’s products or services, conditions or terms of sale, and service capabilities;

and

- ii. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (e) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (f) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (g) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

ARTICLE 44. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the state of Florida, including but not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) upon request from the County's custodian of public records identified herein, providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of the services under this Agreement if Contractor does not transfer the records to the County; and (4) meeting all requirements for retaining public records and transfer to the County, at no cost to the County, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the Contractor upon termination of this Agreement. If Contractor transfers all public records to the County upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County. For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County. Failure to meet any of these provisions or to comply with Florida's public records laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

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

ARTICLE 45. SURVIVAL

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

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date that the Agreement is executed below.

Contractor

Miami-Dade County

By:



Name:

NEIL A. DELEON

Title:

PRESIDENT

Date:

October 26, 2020

Attest:


Corporate Secretary/Notary Public
SUZANNE N. SUN

By:

Name:

Carlos A. Gimenez

Title:

Mayor

Date:

Attest:

Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

SUZANNE N. SUN
Commission # HH 045484
Expires October 2, 2024
Bonded Thru Budget Notary Services

Assistant County Attorney

APPENDIX A-SCOPE OF SERVICES

2.1 **Background**

Miami-Dade County, hereinafter referred to as the "County," as represented by Miami-Dade Public Housing and Community Development (hereinafter "PHCD") owns and operates approximately 9,200 units of public housing in Miami-Dade County. The primary mission of the public housing program is to provide decent, safe, and sanitary housing to extremely low-income families, the elderly, and the disabled.

The County relies on two income sources to operate its public housing: a) subsidies from United States Department of Housing and Urban Development (HUD), and b) rent collected from the public housing residents. In exchange for accepting the subsidy from HUD, the County agrees to operate its public housing pursuant to a complex set of regulations. The intent of these regulations is to ensure that the County provides decent, safe, and sanitary housing, and that residents are treated in a fair and equitable manner. In order to maintain decent, safe, and sanitary housing for all residents and meet its obligation as a landlord, it is sometimes necessary for the County to evict residents. Evictions are typically pursued against residents for criminal activity, drug activity, violent or destructive behavior, non-payment of rent and/or any other violations of their lease. The County pursues evictions in accordance with the federal laws and regulations governing the public housing program, Chapter 83, Florida Statutes (Landlord/Tenant Act), the County's adopted Admissions and Continued Occupancy Policy, and the public housing lease. The County is committed to effectuating the purpose of the "One Strike and You're Out" Policy which has been upheld by the U.S. Supreme Court.

The County makes every effort to resolve lease violations with residents. In the event that it is necessary to evict, residents are afforded ample due process protections, which include the following:

- a) The resident is provided with a mailed or hand-delivered notice, identifying the specific reasons why he or she is being considered for eviction.
- b) The resident can request a grievance hearing in front of a panel (Grievance Board) of three uninterested persons to review the decision to evict. Whatever decision is made by the Grievance Board is binding on the County.
- c) If the matter cannot be resolved, an eviction is filed in County Court where the resident has the opportunity to file an answer and defend against the eviction.

2.2 **Minimum Qualification Requirement**

The minimum qualification requirements for this Solicitation are that the selected Contractor or personnel of the Contractor who will provide private attorney services to the County shall:

- A. Be a member in good standing, and maintain membership, with the Florida Bar and the United States District Court for the Southern District of Florida. Contractor shall provide the appropriate copies of the certificate of good standing from the Supreme Court of Florida and the United States District Court for the Southern District of Florida, with the proposal submission.
- B. Be able to practice in federal court in the Southern District of Florida, or have acquired the services of a bankruptcy specialist that is authorized to practice in the Southern District of Florida, at the time of the proposal submission. Contractor shall provide a notarized

statement that Contractor's key personnel or subcontracted personnel can practice in federal bankruptcy court in the Southern District of Florida, Miami Division.

2.3 Services to be Provided

The selected Contractor shall:

- A. Remain current and be familiar with Florida's Landlord/Tenant Act, public housing laws and regulations, particularly laws and regulations regarding tenancy, evictions, grievance hearings and any other laws that may apply to each case.
- B. Remain current on recent case law developments and all changes in landlord-tenant law, public housing law, bankruptcy law, civil procedure, any other relevant laws, any and all HUD requirements and PHCD lease policies and procedures
- C. Follow instructions of County designated staff, particularly Site Managers and Asset Management staff, in preparing and filing cases for eviction. The selected Contractor will also be required to consult from time to time with the County, and in some cases the County Attorney's Office (CAO) throughout the eviction process to determine how to proceed, what resolution is appropriate, whether to consider settlement, etc.
- D. Follow the directions of the CAO, when the CAO determines that it is in the best interest of the County to do so: either because a particular eviction action involves an important principle, legal or otherwise; or because the CAO is representing the County in an action that requires the cooperation of the selected Contractor;
- E. Assist County staff in the preparation of notices that are required to be sent prior to initiating an eviction;
- F. File eviction actions at the appropriate Court (primarily electronically through the Miami-Dade County Clerk of Courts, or United States District Court for the Southern District of Florida) and see these actions through appropriate resolution.
- G. Perform the following tasks, as applicable, in the eviction actions, as may be requested by the County:
 - 1) Move for default;
 - 2) Seek default final judgment;
 - 3) Defend the County when any cross claims or counterclaims are filed against it in any eviction action;
 - 4) Consult with Site Managers/Asset Management staff, and the CAO if necessary, in the event that an eviction action results in an appeal or raises issues beyond the scope of the initial eviction action;
 - 5) Attend hearings, mediations, and depositions;
 - 6) Conduct discovery actions;
 - 7) Where appropriate, defend the County against unwarranted discovery requests;
 - 8) Attend pre-trial calendar, status conference and calendar call;
 - 9) Represent the County in bench or jury trial;
 - 10) Attend bankruptcy court proceedings in order to move to dismiss bankruptcies, move for relief from stay, assert any claims on behalf of the County, attend creditors meetings and confirmation hearings;
 - 11) Represent the County in adversary proceedings in bankruptcy court;

- 12) Prepare and make all appropriate motions;
 - 13) Defend County in all motions; and
 - 14) Take all necessary action to properly represent the County in its eviction processes.
- H. Represent the County on grievance matters concerning evictions and other Public Housing client claims not resolved by PHCD Asset Management staff.
- I. Provide monthly status reports by site, to site personnel and the Director of the PHCD Asset Management division, consisting of a list of all current actions (eviction, bankruptcy, grievance, etc.) by Client name, Client Number and Case number; the status of each action and the cost for each case.
- J. Develop and present training to the County's Site Managers as requested, and after review by the CAO, on changes to landlord-tenant law and associated areas impacting Public Housing civil procedures with intent to improve case preparation and conclusion. Training shall also include advising Site Managers on what they need to file, when to file and the appropriate language that should be included in any letters submitted to tenants slated for potential and/or for eviction purposes that comply with all Federal Regulations and Florida Law.

2.4 Additional Services

The selected Contractor shall perform additional related services (within Scope of Services requirements), as may be requested by the County upon receipt of a County approved request for quote that has been approved by both County designated staff and the CAO. These additional services are unforeseen circumstances where PHCD may need additional legal representation that is not covered within a regular eviction case, due to lease violations. For example, in the event an eviction case extends longer than the amount of time estimated, due to issues that PHCD must handle through Children and Families Services, because of hoarder cases and evictions that can result with a tenant becoming homeless or evictions that may result in a fair housing claim against the County/PHCD.

2.5 Optional Services

In the event the selected Contractor shall require any Court Reporting Services and/or Translator Services, these services shall be charged at cost, after written notification to the County within 2 business days of determining that services are required. The selected Contractor must present all Court Reports and/or Translated Documents, to include invoices from the court reporting and/or translator providers, to the County for billing/payment purposes.

2.6 Payment for Filing Eviction Actions

The selected Contractor shall charge a Flat Rate for filing eviction related actions inclusive of all items as further detailed in items A, B and C below. Refer to Form 1, Price Schedule.

A. Non Court Related Actions

Non-court related actions include consultation with County Staff; Grievance Board Consultation; reviewing termination notices, if necessary; reviewing eviction/resident file prior to filing of eviction action; drafting and executing any settlement agreement; writing letters on the County's behalf and photo copying charges, faxing, etc. The flat rate is inclusive of all fees and tasks deemed necessary to negotiate a resolution (settlement). If no settlement is reached, then no fees shall be assessed under the non-court related actions and the case shall be considered a court related eviction action (item B below).

B. Court Related Actions

Court related actions include all In-Court and Out-of-Court appearances, preparation for court appearance, witness meetings, client consultations, settlement discussions, photo copying charges, faxing, etc., associated with filing eviction actions, mediations and hearings following mediation for nonpayment of rent eviction and lease violation/"for cause" eviction that includes the following:

- a) Pre-filing consultation (inclusive of reviewing eviction/resident file and reviewing termination notices, if necessary); assistance to the County in the preparation of the eviction notices; filing complaints, serving summons and complaints with the applicable court; continuous consultation with PHCD staff on the eviction action; moving for, attending hearings and obtaining defaults and default final judgments when defendants do not comply with the rules of the court, including but not limited to the failure to deposit rent in court registry or responding to the complaint as prescribed by law; obtaining Writs of Possession; attending mediation with the County's Site Manager(s), and/or designee; obtaining closure of case, voluntary dismissals, any exhibit preparations; and for any hearing that may follow for non-payment of rent eviction and for lease violation "for cause" eviction, which includes preparing documents to disperse funds from the Court registry; reviewing language of court stipulation before execution and preparing documents to disperse funds from Court registry.
- b) Filing eviction actions inclusive of all items to file bench trial and jury trial, defendant represented. In the instance that the Resident fails to comply with voluntary and/or court-ordered stipulations, the Site Manager will advise the selected Contractor and the selected Contractor shall seek to pursue further eviction action against the tenant, including but not limited to seeking final judgment and Writ of Possession at no additional charge to the County. The flat rate is inclusive of all fees in the event that a hearing follows mediation for delinquent rent and/or lease violation and any other purposes deemed necessary to resolve the case.

C. Bankruptcy Proceedings

Bankruptcy proceedings include all court appearances, attendance at depositions, all preparation for court appearance, witness meetings, client consultations, settlement discussions, assertion of any claims on behalf of the County, motion to dismiss bankruptcy, motion for relief from stay, motion opposing confirmation plans, filing proof of claim, attending creditors meetings, attending confirmation hearings, making any other necessary appearances in bankruptcy court and photo copying charges, faxing, etc.

APPENDIX B-FORM 1 - PRICE SCHEDULE, PRIVATE ATTORNEY SERVICES

A. Filing Eviction Actions - Non Court Related

The Contractor shall state its price as a flat rate for providing the non-court related services for filing eviction actions, as stated in Section 2.0, Scope of Services. Refer to Section 2.6 (A) for examples of non-court related services. This flat rate shall include all fees for the tasks deemed necessary to negotiate a resolution/settlement. If no settlement is reached, then this process shall rollover into the court related eviction actions in Section B below and no fees shall be applied under non court related actions (refer to Section 2.6).

Description	Price
Flat Rate for Non-Court Related Services	\$ 750

B. Filing Eviction Actions - Court Related

The Contractor shall state its price as a flat rate for providing the court related services as stated in Section 2.0, Scope of Services. Refer to Section 2.6 (B) for examples of court related services. This flat rate shall include all in-court and out-of-court costs associated with filing eviction actions, mediations and hearings following mediation for nonpayment of rent eviction and lease violation/"for cause" eviction, in addition to all fees in the event that a hearing follows mediation for delinquent rent and/or lease violation and any other purposes deemed necessary to resolve the case.

Description	Price
Flat Rate for Court Related Services	\$ 950

C. Bankruptcy Proceedings

The Contractor shall state its price as a flat rate for providing bankruptcy proceedings services as stated in Section 2.0, Scope of Services. Refer to Section 2.6 (C) for examples of these types of services. This flat rate shall include all fees for the tasks deemed necessary to resolve the case.

Description	Price
Flat Rate for Bankruptcy Proceedings	\$ 500

D. Additional Services

The Contractor shall state the hourly rate for performing any additional related services as may be requested by the County.

Description	
Additional Services	\$ 200 (Not to Exceed Price Per Hour)

E. Optional Services

If the Contractor requires any Court Reporting Services and/or Translator Services, they will be charged at cost, after written notification to the County. The Contractor must present all Court Reports and/or Translated Documents, to include invoices from the providers, to the County for billing/payment purposes.

Notes:

1. The rates above in Sections A through D shall be fixed and firm for the initial contract term. The rates for the option years shall be negotiated.
2. Any extensions pursuant to Article 5 of the Agreement will be at the then current rates.
3. All out-of-pocket expenses, including employee travel, per diem and miscellaneous costs and fees, should be included in the Contractor's price, as they will not be reimbursed separately by the County.
4. Sections A through D will be used to determine the price points for the price criteria as indicated in Section 4.2 of this Solicitation.
5. Notwithstanding the rates above, compensation to the Contractor shall be based on Article 9, Method and Times of Payment, of the solicitation. The Contractor shall not exceed the fixed rates, stated above in Sections A through C, for providing the services.
6. Notwithstanding the proposed hourly rates in Sections D above, the County reserves the right to negotiate the not-to-exceed pricing on a project by project basis, at the County's sole discretion.