

Date: July 6, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor



Agenda Item No. 8(P)(14)

Resolution No. R-630-23

Subject: Recommendation for Approval to Award Capital Projects and Construction Management Solution

Summary

This item is recommending award of a contract for the purchase of an enterprise-wide Capital Projects and Construction Management Solution (Solution) software for the Information Technology Department (ITD), on behalf of the Internal Services Department, PortMiami, and the Department of Transportation and Public Works. Collectively, these departments have approximately 800 active construction projects. Currently there is no countywide capital project management system to optimize and centralize the planning, organization, management, and delivery of these projects. Approval of this item will provide a Solution which is a reliable, modern, and flexible platform for strategically managing projects, cost, schedule, and information from planning to occupancy.

The RFP was issued to obtain a comprehensive, scalable Solution to address the County's need for a modern system to standardize processes, eliminate redundancy, and streamline operations to allow the County to successfully manage its capital project portfolio. The Solution will provide the County with an auditable control mechanism to meet applicable regulatory requirements, including real-time, collaborative workflows for project lifecycle management that centralizes and encompasses tools to measure and manage each step of the capital project process. This includes project documentation and construction monitoring functions necessary for successful project execution for all contributors, including County departments, other government agencies, designers, consultants, owners, vendors, contractors, and subcontractors.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. RFP-01566, Capital Projects and Construction Management Solution*, to e-Builder, Inc. (e-Builder) for ITD on behalf of multiple departments in the total amount of \$7,911,862 for a five-year term and one, five-year option to renew term. There is no existing nor any prior contract for the provision of the recommended enterprise-wide Solution.

Background

A Request for Proposals (RFP) was issued under full and open competition on December 24, 2020 and the solicitation closed on May 21, 2021. Evaluation meetings were conducted between July 26, 2021 and September 21, 2021. Negotiations commenced on December 13, 2021 and concluded on February 13, 2023. A total of 30 strategy meetings with staff and the selected Proposer were held to negotiate the final contract terms including, but not limited to, scope of work, functionality matrix, implementation plan, price schedule, training plan, service level agreement and project resource plan.

The contract will be managed by ITD and includes web-based subscription software, integrations, data conversion, configuration, professional services, training, maintenance, and technical support services to address this critical need and establish a scalable enterprise solution for potential expansion to additional departments. The Solution will be used throughout the project delivery lifecycle to implement best practices and standardize project management. Further, the Solution will include integration with other County systems, including the INFORMS Enterprise Resource Planning (ERP) system, Geographic Information Systems (GIS), and permitting systems.

Since there is no contract in place to provide an enterprise-wide Solution, there is no standardization or centralized management of processes. The participating departments use different methods of managing and delivering projects that ranges from outdated, in-house built systems to simple spreadsheets. This makes it difficult to properly coordinate efforts, budget expenses, and know the status of projects at any given time.

The Water and Sewer Department (WASD) implemented a stand-alone Solution in 2017 for their Capital Improvements Program and subsequently expanded it to include the Development Services Program. Through the use of their Solution, WASD has been able to successfully streamline operations and more effectively manage its multi-year capital improvement plan and utility development process. Additional County departments approached ITD with requests for a modern technological solution to meet similar needs. Upon analysis of the needs of various departments, ITD determined that selecting an enterprise-wide solution would support seamless and consistent operations and services throughout the County, while providing standardized reporting, analytics, and data security standards at the enterprise level. Market research identified eight firms offering software with the required functionality.

The County received 11 proposals, from which e-Builder, Inc. (e-Builder) was the highest ranked proposer and is being recommended for award. e-Builder is the same company that was previously awarded *Contract No. 47457, Enterprise Construction Project Management Software*, established as an accessed agreement through Resolution No. R-543-17 for WASD to procure its Solution. The terms of *Contract No. RFP-01566* were extensively negotiated, resulting in favorable provisions for the County. The subscription software provided under this contract includes unlimited users, allowing for a scalable solution for additional County departments. Should additional departments need to be added, subsequent items may be presented to the Board for approval for any needed data conversion, integrations, professional services, or training necessary to incorporate such departments. It is anticipated that WASD will be added to this contract at a later date.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$3,678,406. Should the County choose to exercise, at its sole discretion, the one, five-year option to renew term the cumulative value will be \$6,879,880. ITD further requests approval for \$1,031,982 in expenditure authority to be used as needed for contingency, licensing, and optional professional services through the term of the contract including any optional renewal period. Therefore, the total amount requested for approval is \$7,911,862.

Department	Allocation	Funding Source	Contract Manager
ITD	\$7,911,862	Internal Service Funds	Marcia Casamayor
Total:	\$7,911,862		

Track Record/Monitor

Angela Mathews-Tranumn of the Strategic Procurement Department (SPD) 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 execute the agreement and exercise all provisions of the contract, including any cancellation, renewal, or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition, and 11 proposals were received in response to the solicitation.

Pursuant to Resolution No. R-477-18, the highest-ranked proposer is recommended in accordance with the method of award per the solicitation and is non-local.

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
e-Builder, Inc.	1800 NW 69 Avenue Suite 201 Plantation, FL	None	0	Daniel Boron
			0%	

*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

The vendors in the below table are not being recommended for award.

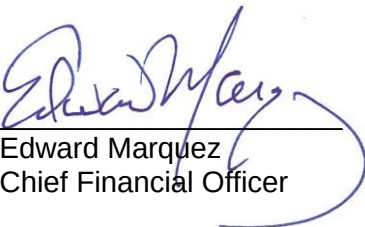
Vendor	Local Address	Reason for Not Recommending
Atser Systems, Inc.	No	Evaluation Scores/Ranking
Aurigo Software Technologies, Inc.	No	
Burns & McDonnell Engineering Company, Inc.	No	
eCIFM Solutions, Inc.	No	
FTI Consulting, Inc.	No	
Parsons Transportation Group, Inc.	No	
Phase Consulting Partners, LLC	Yes	
PMTech, Inc. dba: PMWeb	Yes	
SoftTech Government Solutions, Inc.	No	
Stellar Services, Inc.	No	

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. 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.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise Selection Factor and Local Preference applied.
- The Living Wage does not apply as the services are not covered under the Ordinance.


Edward Marquez
Chief Financial Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: July 6, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(14)

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(P)(14)
7-6-23

RESOLUTION NO. _____ R-630-23

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01566, TO E-BUILDER, INC. FOR THE PURCHASE OF A CAPITAL PROJECTS AND CONSTRUCTION MANAGEMENT SOLUTION SOFTWARE FOR THE INFORMATION TECHNOLOGY DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$7,911,862.00 FOR THE INITIAL FIVE-YEAR TERM, AND ONE, FIVE-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 CONTRACTS, INCLUDING ANY RENEWAL, CANCELLATION 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:

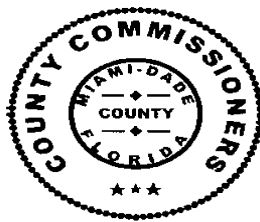
Section 1. This Board approves award of Contract No. RFP-01566 to e-Builder, Inc., in substantially the form attached and made a part hereof, for the purchase of a Capital Projects and Construction Management Solution in a total amount not to exceed \$7,911,862.00 for the initial five-year term and one, five-year option to renew term.

Section 2. This Board authorizes the County Mayor or County Mayor's to exercise all provisions of the contract, including any renewal, cancellation and extension provisions, pursuant to Section 2-8.1 of the Code of Miami-Dade County, Florida and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Juan Carlos Bermudez** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	absent
Roberto J. Gonzalez	aye	Keon Hardemon	absent
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	absent
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of July, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Michael B. Valdes

Contract No. RFP-01566
Capital Project and Construction Management Solution

THIS AGREEMENT for the provision of a Capital Project and Construction Management Solution (the "Agreement"), made and entered into as of this _____ day of _____, 2023 (the "Contract Date") by and between e-Builder, Inc, a wholly owned subsidiary of Trimble Inc., and a corporation organized and existing under the laws of the State of Florida, having its principal office at 13450 W. Sunrise Blvd., Suite 600, Sunrise, FL 33323 (the "Contractor" or "e-Builder"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County").

WITNESSETH:

WHEREAS, the Contractor has offered to provide a Capital Project and Construction Management Solution on a non-exclusive basis, that shall conform to the Scope of Services (see Appendix A), Request for Proposals ("RFP") No. 01566 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 May 18, 2021 (the "Contractor's Proposal") which is incorporated herein by reference; and

WHEREAS, the County desires to procure from the Contractor such Capital Project and Construction Management Solution for the County, in accordance with the terms and conditions of this Agreement.

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

ARTICLE 1. DEFINITIONS

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

- 1.1 The words "Adoption Period" to mean the time, following each Go-Live, during which the Contractor provides those Services outlined in greater detail in Section 8 of Appendix A.
- 1.2 The words "Affiliate" to mean the parent company of e-Builder, Trimble Inc, and any other sister companies of e-Builder that are under ownership of Trimble Inc.
- 1.3 The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- 1.4 The words "Annual Capital Spend" to mean the expenses incurred by the County to demolish, plan, design, build, repair, remodel and furnish a building or site over a period of one year.
- 1.5 The words "Average Annual Capital Spend" to mean the average of the estimated next three (3) fiscal years of the Customer's Annual Capital Spend.
- 1.6 The words "Contract" to mean these (i) Articles, (ii) Scope of Services, (iii) Maintenance and Support Services, (iv) Business Continuity and Disaster Recovery, (v) Price and Payment Schedule, (vi) all other appendices and attachments hereto, and (vii) all amendments issued hereto.
- 1.7 The words "Contract Date" to mean the date on which this Agreement is effective.
- 1.8 The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- 1.9 The word "Contractor" or "e-Builder" to mean e-Builder, Inc, a wholly owned subsidiary of Trimble Inc., and its permitted successors.
- 1.10 The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
- 1.11 The word "Customization" to mean any modification/development/scripting of the code of the Licensed Software which is required to achieve Go-Live, that cannot be accomplished via a configuration and which requires the action of the Proposer to complete.
- 1.12 The word "Days" to mean calendar days.
- 1.13 The word "Deliverable(s)" to mean all Licensed Software and Documentation, as defined below, to be delivered or made available by the Contractor for use by the County, whether on site or remotely accessed, and all Services to be performed for and provided to the County by the Contractor under the Agreement.
- 1.14 The word "Documentation" to mean all manuals, user documentation, and other related materials pertaining to the Solution which are furnished to Licensee by County in connection with the Software.

- 1.15 The term "Unlimited License" to mean a licensing model which grants Licensed Software access rights to all County employees/staff/contractors/agents and employees/staff/contractors/agents of other governmental partners which reasonably require access as part of the operations of the Solution, without limitation as to the number of users that may concurrently access the Licensed Software.
- 1.16 The term "Final Acceptance" to mean the County's written notice that all Work has been completed and the Solution, including all components, has successfully achieved Go-Live and completed the Adoption Periods for all departments identified in Appendix A, and is operating in conformance with the Scope of Services.
- 1.17 The words "Go-Live" to mean that date on which the Solution is used in a production environment for its intended purpose, it being understood that each department included in the Scope of Services may achieve Go-Live on separate dates.
- 1.18 The words "Implementation Timeline" to mean the Implementation Timelines found in Appendix E.
- 1.19 The words "Initial Project Plan" to mean Appendix D of this Agreement.
- 1.20 The words "Licensed Software" to mean the commercially available programs, programming language, and data, including Third Party Licenses, licensed by the Contractor to the County.
- 1.21 The word "Maintenance" to mean any activity intended to eliminate faults, to improve or to keep the Solution in satisfactory working condition, including tests, measurements, adjustments, changes, modifications, enhancements or repairs, and updates.
- 1.22 The words "Notice to Proceed" or "NTP" to mean the provision of a purchase order by the County to the Contractor which shall constitute the County's authorization for Services to begin under this Agreement.
- 1.23 The word "Proposal" to mean the properly signed and completed written good faith commitment by the Proposer submission in response to this Solicitation by a Proposer for the Services, and as amended or modified through negotiations.
- 1.24 The word "Proposer" to mean the person, firm, entity or organization, as stated on the Proposal Submittal Form, submitting a proposal to this Solicitation.
- 1.25 The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- 1.26 The words "Project Plan" to mean the Initial Project plan and all subsequent updates, as amended from time to time by the Parties.
- 1.27 The word "Releases" to mean those versions of the Licensed Software which add functionality to the Licensed Software, including any Updates and Upgrades provided under this Agreement.
- 1.28 The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Contractor.
- 1.29 The word "Services" to mean project management, timeline, configuration, implementation, training, Maintenance and Technical Support Services required to be done by the Contractor.

- 1.30 The word "Solution" to mean the total complement of Licensed Software, Services, Customizations, and all other items, tangible and intangible, designed to operate as an integrated group in order to provide the Solution functionality outlined in the Scope of Services.
- 1.31 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.
- 1.32 The words "Technical Support Services" to mean those services outlined in Appendix B which the Contractor provides to the County in order to ensure optimal performance of the Solution, include all components thereof.
- 1.33 The words "Third Party License(s)" to mean any Licensed Software, whether offered as a software as a service or alternative licensing methodology, manufactured by a party other than the Contractor which is required for the Solution to perform in accordance with the Scope of Services. Third Party Licenses may include Solution components that are fully integrated (i.e. not identifiable by a User as a separate license) or Solution components that readily identifiable as provided by a party other than the Contractor.
- 1.34 The words "Third Party Users" to mean those individuals or entities authorized by the County to perform services, access the Solution, review information, and make inquiries. Third Party Users include the County's consultants, lawyers, designers, owners, vendors, contractors, subcontractors, and part-time or temporary workers.
- 1.35 The term "Training" to mean those services detailed in Appendix F, *Training Plan*, provided by the Contractor to instruct the County on the proper Use of the Solution, which must be successfully completed to achieve Final Acceptance.
- 1.36 The word "Updates" to mean periodic releases of the Licensed Software that may contain fixes or incremental enhancements to the Licensed Software and are included in Maintenance.
- 1.37 The word "Upgrades" to mean periodic releases of the Licensed Software that contain significant enhancements that may include changes necessary to accommodate changes in the hardware platform, database platform, operating system or major changes in capability and functionality.
- 1.38 The term "User" to mean a user of the Solution to include all County departments and any other external agency and project stakeholders that is in a work relationship with Miami-Dade County, including Third Party Users.
- 1.39 The words "Work" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Negotiated Agreement; 2) Appendices to Negotiated Agreement in ascending order; 3) the Contractor's Proposal, and 4) Miami-Dade County's RFP No. RFP-01566 and any associated addenda and attachments thereof.

ARTICLE 3. RULES OF INTERPRETATION

- 3.1 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.
- 3.2 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.
- 3.3 The words "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- 3.4 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 Project Manager.
- 3.5 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.
- 3.6 The titles, headings, captions and arrangements used in these terms and conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, or affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- 4.1 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.
- 4.2 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 Work performed hereunder.
- 4.3 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 under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent as required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- 4.4 The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work that are necessary for the completion of this Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.
- 4.5 The Contractor acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall implement all changes in providing Services hereunder

as a result of a policy change implemented by the County under a fully executed Amendment to this Contract containing any updated scope, pricing, and terms and conditions as agreed upon by the Parties.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the Contract Date and shall continue through the last day of the sixtieth (60th) month. The County, at its sole discretion, reserves the right to exercise the option to renew this Agreement for one (1) additional five (5) year period.

Contractor shall not commence Services hereunder until issuance of NTP, in the form of a Purchase Order, from the County Project Manager, which shall be issued at the earliest practical date after execution of the Agreement, including acceptance of any certifications, affidavits and evidence of insurance, as applicable to this Agreement. Contractor shall, upon receipt of the Notice to Proceed commence, with diligence, performance of the Work.

The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners (the "Board"). The County agrees to continue to remit prorated payment for any use of the Solution for the time period of the extension.

Subject to the provisions of Article 41, *Termination and Suspension of Work*, the parties agree that in the event that fees for Licensed Software have been paid by the County for a term that exceeds the term of the Agreement, the grant of license in accordance with Article 6 and Maintenance and Technical Support shall continue to be provided by the Contractor under the provisions of this Agreement until the period paid by the County has expired.

ARTICLE 6. GRANT OF LICENSE

- 6.1 License of Licensed Software. County's use of the Licensed Software includes a limited license to the Licensed Software, subject to the restrictions contained herein. County acknowledges that title to and copyright in the software applications supplied by the Contractor are reserved by the Contractor. County acquires no right in any software, copyrights, patents or any other intellectual property belonging to or licensed by the Contractor, other than the limited rights to use the Licensed Software. The Contractor is and shall remain the sole owner of all copyrights, trademarks, patents and other proprietary rights in and to all aspects of the Licensed Software (including, without limitation, all software, code, business process and designs used in providing the Licensed Software). County acknowledges that the Licensed Software may be modified or upgraded from time to time, and that the Licensed Software shall include the most recent version thereof. County's use of the Licensed Software is governed the Acceptable Use Policy found in Exhibit 1.
- 6.2 Limited Rights. County's use of the Licensed Software is provided on a limited, non-exclusive, non-transferable basis during the Term. Except as authorized by the Contractor in writing, County will NOT intentionally: (i) access or use the Licensed Software to provide any products or services any person that is not Third Party User; (ii) access or use the Licensed Software, except through the terms hereof including only for the County's Average Annual Capital Spend used to determine the Unlimited Licenses for the Capital Spend Model; (iii) resell, sublicense, lease, encumber, copy, distribute, publish, exhibit, transmit, provide access to, or provide use of the Licensed Software to any third party, nor use or allow them to be used in any public system, public electronic bulletin board (unless agreed by the Contractor), multiple computer or user arrangement or network that includes access by any third party other than Third Party

Users; (iv) derive specifications from, reverse engineer, reverse compile, disassemble, translate, record or create derivative works based on the Licensed Software; or (v) use the Licensed Software, or any part or aspect thereof, for any unlawful purpose or to mislead or harass anyone. Use of or access to the Licensed Software in violation of the terms hereof is strictly prohibited. A User in violation of this Section may have its permission to access or use the Licensed Software may be limited or suspended immediately by Contractor. During such period of time that access or use of the Licensed Software is limited or suspended, the Contractor shall not delete or alter any data contained in the Solution, and shall, upon request of the County, allow the County restricted access to the Licensed Software solely for the purpose of data retrieval or export as a result of a Sunshine Law request.

- 6.3 SaaS License Updates. During the Term, the Contractor will provide County with the latest new releases, updates, patches, fixes and changes to the Licensed Software used to operate the Licensed Software at no additional charge. The updates referenced herein do not include any new or different products provided by the Contractor to its customer base for which additional fees apply.
- 6.4 Licensed Software Rebrand or Successor Product. The Contractor agrees that any rebrand Licensed Software or Successor Product of a new Licensed Software shall be provided using functionally equivalent software as further described in Article 16 and for the purposes of this Agreement, shall not be considered a new or different product, regardless of any naming convention or rebranding conducted by the Contractor
- 6.5 Third Party Licenses. To the extent a Third-Party License is necessary in connection with making any functionality provided in the Scope of Services for the Solution available to the County, the Contractor shall also provide such Third Party License for the Term of the Agreement, including any extensions or renewals thereof, to enable the County to fully utilize the Solution in accordance with the Agreement. In the event that a Third-Party License becomes unavailable during the Term of the Agreement, including extensions or renewals thereof, the Contractor shall, at no cost to the County, either: 1) obtain a replacement Third Party License to cause the Solution to perform in conformance with the Agreement or 2) complete Customization to the Solution to cause the Solution to performance in conformance with the Agreement.

ARTICLE 7. DELIVERY

- 7.1 Delivery of the Solution shall be according to Appendix A, "Scope of Service" and contingent upon Final Acceptance by the County.
- 7.2 Documentation. The Contractor shall provide electronic copies of the associated Documentation as provided by the developer(s) of the Solution to the County upon Final Acceptance.

ARTICLE 8. MAINTENANCE AND TECHNICAL SUPPORT SERVICES

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

ARTICLE 9. PROTECTION OF SOFTWARE

- 9.1 Ownership. County agrees that the Solution includes, without limitation, enhancements, edits, improvements, additions, modifications and derivations thereto, and will remain the exclusive

property of the Contractor. Contractor will have the unrestricted and permanent right to use and implement all ideas, advice, recommendations or proposals of County with respect to the Solution in any manner and in any media, which the Contractor shall own. Should the Contractor provide Services to the County that results in the creation of derivative works from the Solution or any new technology, the Contractor shall own all right, title and interest therein, which the County hereby assigns to the Contractor. For purposes of clarity, the Contractor shall own all software and hardware configurations, regardless of who builds them.

ARTICLE 10. SOFTWARE MODIFICATIONS

10.1 Solution Enhancements or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modifications into the Solution. When requested by the County, the Contractor shall prepare a Statement of Work ("SOW") for the specific Project that shall define the Work to be performed. The Contractor shall submit a cost proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

10.2 After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Such enhancements or modifications shall become the property of the Contractor. Such enhancements or modifications shall be incorporated in the Licensed Software. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.

10.3 Following the County's acceptance of all enhancements/modification, the Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Solution, and any and all Documentation relating to the Licensed Software and or enhancements/modification thereto.

ARTICLE 11. IMPLEMENTATION SERVICES

11.1 If the Contractor fails to provide Deliverables within the time specified or if the Solution delivered fails to conform to the requirements or are found to be defective in material or workmanship, then the County may (i) reject the Deliverable in totality or (ii) accept any portion of Deliverable and reject the balance of the Deliverable. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or updated Deliverable within a mutually agreed upon time period following the Contractor's receipt of the County's rejection notice.

11.2 The Contractor shall bear the risk of loss or damage to the Deliverable until the time the Project Manager certifies that the Deliverable, Solution, Update, or Upgrade has successfully completed the acceptance testing whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor.

11.3 Contractor agrees to commence installation of the Solution according to the Implementation Timeline (as provided in Appendix E) unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours. Whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services without interruption and in accordance with the Implementation Timeline, so that such Solution is in good working order and ready for use by the dates set forth in the Timeline.

- 11.4 Contractor agrees to do all things necessary for proper implementation of the Solution and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all Work with all other contractors and/or County personnel performing work to complete Solution installation. The County shall be responsible for resolving all disputes relating to site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the Solution. The County shall attempt to provide reasonable working and secure working space for the performance by Contractor of the implementation services described herein.
- 11.5 Unless otherwise agreed to by the County, Contractor agrees as part of the implementation to perform all required Work to successfully achieve all objectives set forth in the Scope of Services.
- 11.6 Solution testing shall consist of the tests described in the Scope of Services which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the Solution in conformance with the requirements of the Contract. This will include an actual demonstration of all required Solution functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating Solution performance.

ARTICLE 12. TESTS

The Contractor shall configure and program the Solution to conform to the Scope of Services. The Solution shall be subject to numerous tests, including acceptance testing as further defined in the Scope of Services as developed and agreed by both parties. To assure Solution performance, the Parties will jointly coordinate all testing of the Solution and provide Final Acceptance upon completion of all milestones and deliverables as outlined in the Scope of Services, as such may be amended via the Extra Work provisions of the Agreement.

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

After Final Acceptance is granted, any modifications, fixes, enhancements, and/or new releases of the Solution that may be impactful to the functionality of any integrations outlined the Scope of Services shall be tested by Contractor.

ARTICLE 13. BUSINESS CONTINUITY AND DISASTER RECOVERY

Contractor shall provide the County with business continuity and disaster recovery services in the manner outlined in Appendix B, *Service Level Agreement*, for the Solution throughout the term of this Agreement, including any options or extensions exercised by the County.

ARTICLE 14. SERVICE LEVEL

Upon execution of this Contract, Contractor shall provide the County with Service Levels in the manner outlined in Appendix B, *Service Level Agreement*, for the Solution throughout the term of this Agreement, including any options or extensions exercised by the County.

ARTICLE 15. THIRD PARTY WARRANTY

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

ARTICLE 16. FUNCTIONALLY EQUIVALENT SOFTWARE

As long as the County maintains continuous Maintenance and Technical Support Services with Contractor for the Solution and (i) in the event the Solution is no longer supported, and (ii) the Contractor makes available successor software products (e.g., software products based on a new technical architecture) ("Successor Product(s)") with substantially similar price, features, and functionality to the Solution during the Contract Term, including any extensions or renewals thereof, then County, at its sole discretion, may transfer the Solution to the Successor Product(s), for no additional subscription or maintenance fees. In the event the County elects to transfer its license to the Solution to the Successor Product(s), the County shall discontinue use of the existing Licensed Software upon successful implementation of the Successor Product(s). Should the County request Service from the Contractor in order to complete the implementation of such Successor Product(s), the County will request a quote from the Contractor that shall define in detail the Services to be performed, project staffing, anticipated project schedule, and other information relevant to the project including all costs pertaining to such Services. The parties shall mutually agree to terms of such Services in the form of an amendment or supplemental agreement, executed in writing by both parties.

ARTICLE 17. ADDITIONAL LICENSES, SOFTWARE, OR SERVICES

During the term of the contract, the County may purchase additional licenses (if County decides to purchase additional instances of the Licensed Software using a named user model), software, or services provided they are available. Each order must refer to this contract and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Contract will govern the purchase and sale of additional licenses, software, or services. Any modification to the Scope of Services of this Contract will require mutual written agreement between the Contractor and the County.

ARTICLE 18. EXTENSION OF TIME

- A. If the Contractor is delayed at any time hereunder due to any of the following, then the affected schedule or the required performance of Work may be extended by the County in the reasonable exercise of its discretion for such reasonable time as the County may determine, subject to the following conditions:
- i. The cause of the delay is beyond the Contractor's control and arises without its fault or negligence, and arises after the execution hereof and neither was nor could have been anticipated by the Contractor by reasonable investigation; and
 - ii. The completion of the Work will be actually and necessarily delayed by the causes set forth in "i" above; and
 - iii. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of

delay; and

- iv. The Contractor has provided a written request and other information to the County, as described in subsection (D) below, within ten (10) days after the time the Contractor knows or reasonably should have known of any cause which might result in a delay for which the Contractor may request an extension of time (the "Delay Notice"). The Contractor shall specifically state in such Delay Notice that an extension is or may be requested and identify the cause of the delay, describing the nature and its effect on the completion of the affected portions of the Work identified in the Delay Notice. If the Contractor fails to give the Delay Notice timely, the right to request an extension for such cause shall be waived.
- B. All references in this Article to the Contractor shall be deemed to include Subcontractors and suppliers, all of whom shall be considered as agents of the Contractor.
- C. The period of any extension of time shall be only that which is necessary to make up the time actually lost. The County reserves the right to rescind or shorten any extension previously granted if the County subsequently reasonably determines that any information provided by the Contractor in support of its request for an extension of time was erroneous or that there has been a material change in the facts stated.
- D. The County may require the Contractor to furnish such additional information or documentation, as the County shall reasonably deem necessary or helpful in considering an extension request. The Contractor understands an extension of time will not be granted unless the Contractor affirmatively demonstrates to the County's reasonable satisfaction that the circumstances shown justify such extension.
- E. Within thirty (30) days of its receipt of all information and documentation as may be required by the County, the County shall advise the Contractor of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the County to render its decision within such thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- F. Since the granting of an extension of time may materially alter the scheduling plans and other actions of the County and since, with sufficient notice, the County might, if it should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause a dispute as to the existence or substance thereof, the giving of written notice as required in subsection (A)(iv) above shall be a condition precedent to the Contractor's rights hereunder.
- G. Should any person seek a restraining order, preliminary injunction or an injunction, of which the Contractor becomes aware, which may delay the Work, configuration, installation, or delivery of the Solution, the Contractor shall promptly give the County a copy of all legal papers received or prepared or received by the Contractor in connection with such action or proceeding.
- H. Neither permitting the Contractor to proceed with the Work subsequent to any missed schedule or performance of any Work (as such date may have been extended pursuant to Article 19, *Extension of Time Not Cumulative*, nor the making of any payments to the Contractor shall compromise the County's contractual right to delay of payment as outlined within Appendix C "Price and Payment Schedule" or to declare the Contractor in default.
- I. County Extension of Time. The County may exercise upon reasonable notice to the Contractor, an extension of time to complete any County responsibility outlined within the Scope of Services.

This notification shall include information as to the need for the extension and the anticipated date of completion.

ARTICLE 19. EXTENSION OF TIME NOT CUMULATIVE

In the event the Contractor shall be delayed concurrently by two or more of the causes identified in Article 18, *Extension of Time*, the Contractor shall be entitled to a separate extension of time for each one of the causes but only one period of extension shall be granted for the delay. In addition, the Contractor shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Services unless the overall services is necessarily affected by the delay. Accordingly, in the event of a delay, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

ARTICLE 20. COUNTY DELAY

Due to the firm fixed price nature of the Solution, any material failure to perform, or any material delays caused by the County, in permitting or assisting Contractor in the configuration or implementation of the Services, shall be deemed to be a material breach of this Contract by the County. Contractor shall be excused from project deadline commitments if any delays are due to the County's failure to fulfill its obligations hereunder or under any exhibits hereto. The Contractor shall give the County the time limits mutually agreed upon the review and approval of the project timeline to fulfill its obligations. After such time, the Contractor may suspend the Licensed Software, terminate this Contract or avail itself of such remedies as are available to it hereunder or under applicable law. Notwithstanding any such delays, the County shall continue to remit payment to the Contractor hereunder on a timely basis. For purposes of clarity, the delays covered by this Paragraph include only those for which the County has discretion and control, and specifically excludes matters that are beyond the County's discretion and control.

ARTICLE 21. EXTRA WORK/CHANGE REQUESTS

- A. Extra Work Definition. The County reserves the right to order changes or direct work that may result in additions to the amount, type or value of the Work shown in the Contract and are within the general scope of the Contract, but are outside of the defined Scope of Services, in accordance with this Article. Any such changes that result in additions to the Work will be known as "Extra Work."
- B. Extra Work Procedure. No Extra Work shall be performed except pursuant to a written Supplemental Agreement issued by the County expressly authorizing the performance of such Work and explicitly declaring the intention of the County to treat the Work described therein as Extra Work. In the absence of such a Supplemental Agreement, if the County Project Manager shall direct, order or require any work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall give written notice to the County Project Manager stating why the Contractor deems it to be Extra Work and shall not perform any Extra Work until such time a Supplemental Agreement has been executed.
- C. Scope Changes Definition. When either party identifies the need for a change in Appendix A, Scope of Services ("Scope Change"), a change review process will be initiated by the requesting party in order to determine the appropriate authority to review and approve the change and to determine whether such change constitutes Extra Work. Changes may include, but are not limited to, the following:
 - 1) Any change that impacts Appendix C, *Price and Payment Schedule*
 - 2) Any changes that impacts the Implementation Timeline

- 3) Any changes that impact staffing levels for either party
 - 4) Additions or deletions to functionality
 - 5) Any changes to any Deliverable or required Service listed in the Scope of Services
- D. Contractor Change Requests. Upon identification by the Contractor, the Scope Change request will be submitted to the County's Project Manager for review and determination of the appropriate authority. The County may request feedback or additional information from a Contractor Project Manager regarding any change requested. Following review, the County Project Manager will notify a Contractor Project Manager of the appropriate authority level in accordance with the governance structure outlined in the Scope of Services. In the event that a change request is determined, by the County in its reasonable discretion, to be a material contractual impact or is determined to be Extra Work, appropriate approval may be sought from the County Mayor or Designee, or the Board of County Commissioners. Contractor shall not perform work on any Scope Change, as defined in this paragraph, until such time a mutually agreed upon Supplemental Agreement has been executed. However, minor changes that do not impact cost, overall project schedule, or overall functionality may be approved by the County's Project Manager do not constitute Extra Work and shall be captured in the associated status report and/or Project Plan.
- E. County Change Requests. Upon identification by the County, the Scope Change request will be submitted to the Contractor's Project Manager for review. The Contractor may request feedback or additional information from the County regarding any change requested to determine if such change constitutes Extra Work as defined in the Agreement. Following review, the Contractor will notify the County of any potential cost and schedule impacts in accordance with provisions of this Article. Contractor shall not perform work on any Scope Change, as defined in this paragraph, until such time a mutually agreed upon Supplemental Agreement has been executed.
- F. For avoidance of doubt, Services not explicitly stated in the Scope of Services, but reasonably required to be performed by Contractor in order to successfully implement the Solution shall not be considered Extra Work or be subject to additional compensation by the County. This includes the delivery and Acceptance of all functional and technical requirements identified in Attachment 1 and Attachment 2 as being included in the Scope of Services, even in the event that the gap analysis outlined in the Scope of Services reveals that additional effort, resources, staffing, or work arounds are required by Contractor in order to achieve Acceptance.
- G. The provisions of the Contract relating to the Work and its performance shall apply without exception to Extra Work and the performance thereof, except as otherwise provided in a written Supplemental Agreement between the Contractor and the County.

ARTICLE 22. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via facsimile or e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) To the County

- a) to the Project Manager:

Miami-Dade County
Information Technology Department
Attention: Eleya Asbert
5680 SW 87th Avenue

Miami, Florida 33173

Phone: (305) 596-8305
E-mail: Eelyn.asbert@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1375
Miami, FL 33128-1974

Phone: (305) 375-4900
E-mail: CPO@miamidade.gov

(2) To the Contractor

e-Builder, Inc.
13450 W. Sunrise Blvd, Suite 600
Sunrise, FL 33323
Attention: Legal Department

Phone: (754) 755-8727
E-mail: Carlos_Abaunza@Trimble.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 23. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

- A. 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 to be performed under this Contract. The compensation for all Work performed under this Contract, including all costs associated with such Work, shall be in accordance with the Price and Payment Schedule (Appendix C), and all amounts payable hereunder by the County shall be payable to the Contractor pursuant to the payment milestones as defined in Appendix C. The County shall have no obligation to pay the Contractor or any additional sum in excess of this amount, except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Contractor. All Services undertaken by the Contractor prior to the County's approval of this Agreement shall be done at the Contractor's risk and expense.
- B. All payments are exclusive of Federal, state, local and foreign taxes, levies and assessments. Each Party shall be responsible for its own taxes (whether Federal, state or local), together with all governmental filings related thereto, which arise out of the Solution rendered hereunder. If the County is a tax-free entity, it must provide a tax exemption certificate to the Contractor upon the signing of the Contract. Unless the County is a tax-free entity, the County shall be responsible for any sales and use taxes.
- C. Contractor may suspend access to the Licensed Software if County fails to timely remit payment or is otherwise in material default hereunder. Any notices of default/termination and suspension

may be combined.

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

ARTICLE 24. METHOD AND TIMES OF PAYMENT

- A. The Contractor shall bill the County periodically in accordance with the payment terms established in Article 25 below. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of 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 ("SBEs"), 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 "Code"), the time at which payment shall be due from the County or the Public Health Trust (the "Trust") shall be forty-five (45) days from receipt of a proper invoice. Notwithstanding the foregoing, all fees payable to the Contractor shall be due sixty (60) days from receipt of a proper invoice and the Contractor shall not charge any late payment interest until after such sixty (60) day period has elapsed. All payments due from the County or the 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 Trust.
- B. In accordance with Miami-Dade County Implementing Order No. 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, 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.
- C. Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as instructed by the County Project Manager.
- D. The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 25. PAYMENT

- A. The County shall pay the Contractor for the Licensed Software amounts detailed in the table below. The Contractor will invoice sixty (60) days from the Contract Date fifty percent (50%) of the Year 1 Licensed Software fee amount. The Contractor will subsequently invoice every six (6) months for fifty percent (50%) of the then current year Licensed Software fee amount.
- B. The County shall pay the Contractor based on milestones, contingent upon occurrence of the Acceptance of Deliverables as milestones as herein defined. Each milestone payment to be made no more than once with respect to the achievement of such milestone but payable the first time such milestone is achieved. Upon completion of all referenced steps from Appendix D, the

Contractor shall invoice the County in accordance with Article 24, *Method and Times of Payment*, subject to the provisions of Article 26, *Milestone Approval Process*.

- C. The amount of each milestone for the total value of the initial Contract Term is outlined in the table below:

Payment Amount	Milestone
\$87,901.60	Acceptance of Planning and Kick-Off (Step 1 thru 9 as defined in Appendix D)
\$274,450.00	Licensed Software Payment 1 (Invoiced 60 days from Contract Date)
\$43,950.80	Acceptance of Wave 1 – Port Miami (Wave 1: Step 10 thru 66 as defined in Appendix D)
\$43,950.80	Acceptance of Wave 1 – DTPW (Wave 1: Step 10 thru 66 as defined in Appendix D)
\$43,950.80	Acceptance of Wave 1 – ISD (Wave 1: Step 10 thru 66 as defined in Appendix D)
\$43,950.80	Acceptance of SSO Setup (Step 1 thru 3 as defined in Appendix D)
\$43,950.80	Acceptance of Shared Testing Environment (Step 1 and 3 as defined in Appendix D)
\$87,901.60	Acceptance of Wave 2 – Port Miami (Wave 2: Step 1 thru 39 as defined in Appendix D)
\$87,901.60	Acceptance of Wave 2 – DTPW (Wave 2: Step 1 thru 39 as defined in Appendix D)
\$87,901.60	Acceptance of Wave 2 – ISD (Wave 2: Step 1 thru 39 as defined in Appendix D)
\$87,901.60	Acceptance of Wave 3 (Wave 3: Step 1 thru 22 as defined in Appendix D)
\$274,450.00	Licensed Software Payment 2 (Invoiced 6 months from Licensed Software Invoice 1)
\$43,950.80	Acceptance of Data Warehouse Setup (Steps 1 thru 3 as defined in Appendix D)
\$43,950.80	Completion of Adoption Period – Port Miami
\$43,950.80	Completion of Adoption Period – DTPW
\$43,950.80	Completion of Adoption Period – ISD
\$43,950.80	Final Acceptance
\$274,450.00	Licensed Software Payment 3 (Invoiced 6 months from Licensed Software Invoice 2)
\$274,450.00	Licensed Software Payment 4 (Invoiced 6 months from Licensed Software Invoice 3)
\$274,450.00	Licensed Software Payment 5 (Invoiced 6 months from Licensed Software Invoice 4)
\$274,450.00	Licensed Software Payment 6 (Invoiced 6 months from Licensed Software Invoice 5)
\$288,172.50	Licensed Software Payment 7 (Invoiced 6 months from Licensed Software Invoice 6)
\$288,172.50	Licensed Software Payment 8 (Invoiced 6 months from Licensed Software Invoice 7)
\$288,172.50	Licensed Software Payment 9 (Invoiced 6 months from Licensed Software Invoice 8)
\$288,172.50	Licensed Software Payment 10 (Invoiced 6 months from Licensed Software Invoice 9)

ARTICLE 26. MILESTONE APPROVAL PROCESS

The County will review, approve, and provide written Acceptance for all milestones listed in above via the following process:

- Contractor will submit, via e-mail to the County, a Milestone Acceptance Form (MAF), included as Appendix C1, for each completed milestone.

2. The County will review the Deliverable(s) associated with the MAF within the time period mutually agreed to in accordance with the schedule outlined in the Project Plan for Acceptance. The County agrees that such Acceptance shall not be unreasonably withheld or delayed. The Contractor understands that failure by the County to provide a notice of Acceptance does not constitute Acceptance.
3. If the County determines, in its reasonable discretion, that the Deliverable(s) associated with the MAF fails to conform to the requirements or are found to be defective in material or workmanship, then the County may reject the Deliverable(s) or may grant conditional Acceptance of the Deliverable(s) and reject the balance of the Deliverable(s). In the event of conditional Acceptance, the County shall notify the Contractor in writing of the deficiencies that resulted in the conditional Acceptance. Contractor agrees to correct such deficiencies in the Deliverable(s) in a mutually agreed upon timeframe of the Contractor's receipt of the County's notice. Conditional Acceptance may result in partial payment being issued for the milestone, and the remaining portion of the payment being completed upon the County's Acceptance of the corrected portion of the Deliverable(s).
4. In the event of rejection, the County shall notify Contractor of such rejection in writing and specify therein the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement for the Deliverable(s) within a mutually agreed upon timeframe of Contractor's receipt of the County's notice. Payment shall not be issued for any milestone that is rejected. The County reserves the right to suspend all Work being performed under the Agreement, except those Services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for Acceptance.

ARTICLE 27. 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 related to gross negligence or willful misconduct of the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Contractor shall furnish to the Miami-Dade County, Risk Management Division 111 NW 1st Street Suite 2340 Miami FL 33128-1987, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation for all employees as required by Florida Statute 440.
- B. Commercial General Liability, in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate. Miami-Dade County must be included as an additional insured.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 combined single limit.

- D. Professional Liability in an amount not less than \$5,000,000 per occurrence \$5,000,000 in the aggregate.
- E. Cyber Liability to include ransomware, media liability, breach response costs, regulatory fines and penalties as well as credit monitoring expense in an amount not less than \$5,000,000 per occurrence \$5,000,000 in the aggregate.

All insurance shall be written on an occurrence basis. Professional and Cyber liability may be written on a claims-made basis. Any applicable retroactive dates shall precede agreement date.

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

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

Or

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

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

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

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of award by the County. 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 after a thirty (30) day period after the expiration of insurance, 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 28. 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 Work described herein and to full and prompt cooperation by the Contractor in all aspects of the Work. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Work 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. Subject to the Limitation of Liability provision found in this Contract, the Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for 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 always agrees that it will employ, maintain and assign to the performance of the Work 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 Work described herein, in a competent and professional manner.
- E. The Contractor shall always cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 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 29. EMPLOYEES OF THE CONTRACTOR

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

During the Term and for a period of two (2) years thereafter, County will not directly recruit or offer employment to any officers, agents, representatives or employees of Contractor that directly perform any Work for the County, without the prior written consent of the Contractor. This clause does not apply to any Contractor employee answering a general solicitation from the County.

ARTICLE 30. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all Work 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 always, 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 31. AUTHORITY OF THE PROJECT MANAGER

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.

ARTICLE 32. DISPUTE RESOLUTION

- A. The Contractor hereby acknowledges that the 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. In the event the dispute leads to the significant delay of the Contractor's work or otherwise results in a significant adverse impact to County operations, as deemed by the County, the Contractor shall promptly comply with every order of the Project Manager 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. The Contractor's compliance with such order shall not be deemed a resolution of the dispute and the Contractor shall reserve the right to pursue any remedy available under this Article or the law.
- C. 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 the Parties assuming that the Contractor has decided to not pursue any remedies available under law after exhausting the provision of this Article.. Any such dispute shall be brought, if at all, before the County Mayor within ten (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 regarding such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

F. This Article will survive the termination or expiration of this Agreement.

ARTICLE 33. MUTUAL OBLIGATIONS

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

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.

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 such defense or settlement costs from the Contractor.

ARTICLE 34. 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 Agreement. 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 35. FINANCIAL 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 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, 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 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.

Contractor will have the right, during normal business hours and upon reasonable notice, to have an independent firm audit the construction capital spend model, the amount of Annual Capital Spend that the County has incurred. The audit will be conducted at the Contractor's expense, unless it reveals that the County has not complied in which case the County will (i) reimburse Contractor for all reasonable costs and expenses incurred by Contractor regarding such audit; and (ii) pay Contractor any annual license fee underpayment disclosed by the audit. In lieu of an audit, the County may provide the County's Annual Capital Spend via a publicly published budget.

ARTICLE 36. SUBSTITUTION OF PERSONNEL

- A. Notwithstanding employment changes outside of the Contractor's control, such as sickness, jury duty, changes in employment status, personal hardship, military deployment, or other material changes, the Contractor agrees to avoid replacing or reassigning any Key Personnel under this Agreement, pursuant to the paragraph below. But for the aforementioned employment changes, the Contractor may not substitute any Key Personnel specifically identified in the Appendix D as providing services in connection with the Contract without the County's written approval of the substitution and of the replacement employee.
- B. In the event the Contractor wishes to substitute Key Personnel identified in Appendix D, *Initial Project Plan and Resource Allocation Plan*, for a reason not related to an employment change, 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. In the event of an employment change, the Contractor may assign an interim replacement employee for a period not to exceed thirty (30) days. The Contractor must provide to the County the resume and any other applicable qualifying credentials of the replacement employee. Replacement employee must possess equal or superior skills, qualifications, and experience as the employee being replaced. The County reserves the right to conduct interviews, check references, or use any other means the County deems appropriate.
- C. Effective the date of the County's receipt of the substitution request, the County shall have five (5) business days to review the resume and credentials of the replacement employee and issue a written approval or statement of non-qualification. If the County does not issue a response to the request for a replacement within the time limits set forth, the Contractor's proposed replacement shall become effective ten (10) business days after the County's receipt of the request. All costs associated with the substitution of personnel shall be borne by the Contractor.

ARTICLE 37. 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 38. SUBCONTRACTUAL RELATIONS

- A. If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts, omissions, and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The Work 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 Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work 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 Work to be performed. Such Work 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 Work in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- E. The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.
- F. This Article only applies to Subcontractors for Services and not the Licensed Software.

ARTICLE 39. 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 speculative predictions of future events the County makes no representations or guarantees; 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 40. 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 41. TERMINATION AND SUSPENSION OF WORK

- A. This Agreement may be terminated for cause by the County for reasons including, but not limited to the Contractor commits an Event of Default (as defined below in Article 42) and fails to cure said Event of Default.
- B. This Agreement may be terminated for cause by the Contractor for any Material Breach by County and fails to cure with thirty (30) days after notice is given to County to effect such cure.
- C. County also may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- D. If County terminates this Agreement for cause under Article 41 (C) 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 pay all direct or indirect costs associated with such termination or cancellation, including attorney's fees.
- E. The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting 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.
- F. 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. If the County terminates this Contract under this Paragraph, all fees properly due, but not paid, and all previously paid subscription fees (both used and unused) for the current payment period shall be non-refundable and forfeited. Furthermore, all earned, but unpaid, fees for Services must be paid in full before the termination becomes effective.
- G. In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice (the "Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables, including Updates and Upgrades, that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services; and
 - v. take no action which will increase the amounts payable by the County under this Agreement.
 - vi. at no additional cost to the County, transfer all documents, papers, records, charts, reports, or any other materials or information produced as a result of or pertaining to the Services provided under this Agreement;

vii. at a cost not to exceed \$500 (except in the event of termination for cause, in which case no cost shall apply) to the County and within fifteen (15) days of such request by the County, make available to the County, any and all County data and documents contained in the Licensed Software in a format agreed to by the parties. The request from the County shall be made within ninety (90) days of the termination. After ninety (90) days, all County data and document shall be destroyed.

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

- i. portion of the Work 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.

I. All compensation pursuant to this Article are subject to audit.

J. In the event the Contractor fails to cure an Event of Default timely, the County may terminate this Agreement, and the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 42. EVENT OF DEFAULT

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

- i. the Contractor has not delivered Deliverables, Solution, Work, Updates or Upgrades 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 Work;
- 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 or certifications stated herein; or.
- viii. data breach

When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work 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. 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 and/or material breach of this Agreement; and
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 43. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall notify the Contractor (the "Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured: (1) immediately, if the default is of the type that needs to be cured on an emergency basis as deemed by the County, or; (2) if not emergency type of default, within a thirty (30) day period. If the condition for default is not cured within the time limit set forth, this Agreement with the County may be terminated. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 44. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, whether or not the County elects to terminate this Agreement as a result thereof, 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 refund of any prepaid, but unused fees.

The Contractor shall also remain liable for any liabilities, damages, 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 45. PATENT AND COPYRIGHT INDEMNIFICATION

- A. The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- B. The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- C. The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished

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

- D. In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- E. The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable or Solution hereunder. The Contractor shall enter into agreements with all suppliers and Subcontractors at the Contractor's own risk. The County may reject any Deliverable or Solution 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 46. CONFIDENTIALITY

- A. All 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 for which the County holds the proprietary rights, constitute County Confidential Information and may not, without the prior written consent of the County or expressly agreed upon in this Contract, 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 County Confidential Information and shall be subject to all the requirements stated herein. Except as expressly agreed upon in this Contract, 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 County Confidential Information without the prior written consent of the County.
- B. The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such County 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 County 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 County 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 County 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.

- D. Contractor Confidential Information shall mean any information or documentation provided by the Contractor that falls into an exception of the Florida Public Records law.
- E. Notwithstanding the foregoing, Contractor Confidential Information shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the County; (ii) was in the County's possession at the time of disclosure without violation of any confidentiality restriction and without any restriction on the County's further use or disclosure; or (iii) is independently developed by the County without use of the disclosing Party's Confidential Information. For purposes of clarity, Confidential Information shall mean information in any median including hard copy, electronically stored or stored in any other means or manner.
- F. The County shall maintain Confidential Information of the Contractor with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. The County shall advise the other party in writing of any misappropriation or misuse of Confidential Information of the Contractor of which the receiving party becomes aware.
- G. The County shall not use Confidential Information of the Contractor for any purpose other than in furtherance of this Agreement and the activities described herein. The County may disclose Confidential Information of the Contractor only to those persons who have a need to know such Confidential Information (including County's authorized users to the extent necessary to enable them to use the Licensed Software as intended) and shall make commercially reasonable efforts to have such persons respect the confidentiality of the Confidential Information.

ARTICLE 47. PROPRIETARY INFORMATION

- A. As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of the public records laws of the State of Florida (the "Public Records Law").
- B. 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.
- C. 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 (the "Computer Software"). All third-party license agreements must also be honored by the Contractor and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all third-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 all information technology software.
- D. 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 48. 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. The Contractor collects data from clients and third parties in the course of delivering the Licensed Software (the "Customer Data"). The Contractor and Contractor's Affiliates aggregates the Customer Data that it collects from clients (the "Aggregated Data") to perform market analysis and to improve the Licensed Software and Affiliate products (the "Data Purpose"). County authorizes Contractor and Contractor's Affiliates to incorporate any Customer Data obtained in providing the Licensed Software to the County into the Aggregate Data, as long as the Customer Data and Aggregate Data are both in a de-identified and anonymized form, and provided further that: (i) no confidential information (including the identity of the County or its suppliers, customers or employees) will be disclosed by Contractor and Contractor's Affiliates or be otherwise used or processed by Contractor and Contractor's Affiliates in a manner that enables the identity of Customer to be deduced or extracted; and (ii) the Customer Data shall be used exclusively for the incorporation into the Aggregate Data, which shall be used exclusively for the Data Purpose.

ARTICLE 49. AVAILABILITY OF CONTRACT TO GOVERNMENT ENTITIES

Although this Contract identifies some County Departments, it is hereby agreed and understood that any County department, County agency, or other Governmental Entity in the United States may avail itself of this contract and purchase any and all Products and/or Services provided by Contractor at the price(s) negotiated specifically for that Governmental Entity. Under these circumstances, a separate Statement of Work shall be issued requesting the Products and/or Services, which identifies the requirements of the additional County department(s).

ARTICLE 50. SMALL BUSINESS ENTERPRISES

The Parties agree that there is no Small Business Enterprise participation requirement in this Agreement.

ARTICLE 51. 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 vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. 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**
- **Payments to individual/Contractor for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**
- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

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 Verification of Employment Eligibility (E-Verify) Affidavit**
(Section 448.095, of the Florida State Statutes)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution No. R-919-18)
14. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
15. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1, 2-8.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
16. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

B. Conflict of Interest and Code of Ethics

Sections 2-11.1 (c) and (d) of the Code require that any County official, agency/board member or employee, or any member of his or her immediate family who, through a firm, corporation, partnership or business entity, has a 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 obtain and submit a written conflict of interest opinion from the County's Ethics Commission prior to the official, agency/board member or employee, or his or her immediate family member entering into any contract or transacting any business with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business transaction entered in violation of these subsections, as amended, shall be rendered voidable. All County officials, 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 Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 52. COUNTY USER ACCESS PROGRAM (UAP)**A. User Access Fee**

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

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

B. 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 40, *Event of Default*, of this Contract.

ARTICLE 53. INSPECTOR GENERAL REVIEWS**A. Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order No. 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "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.

B. Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code, 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 of one percent (0.25%) 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 Supplemental Agreements and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) 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 No. 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 of one percent (0.25%) 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 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 Supplemental Agreements to the Contract. The Inspector General is empowered to retain the services of IPSIGs 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, Supplemental Agreement 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 54. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- 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 Contract 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 C.F.R. Part 5).

- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. 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.
- p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. 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), and permit(s) for the Contractor prior to authorizing work and as needed.

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

ARTICLE 55. 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.

Contractor's compliance with Accessibility standards shall be in accordance with Contractor's Voluntary Product Accessibility Template (VPAT), as amended by Contractor from time to time.

ARTICLE 52. 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 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 56. 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 other than in furtherance with the Work performed by Contractor 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 Work, Solution or Service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 57. BANKRUPTCY

The County may terminate this contract for cause, 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 58. 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 in Miami-Dade County.

ARTICLE 59. FIRST SOURCE HIRING REFERRAL PROGRAM

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

For purposes of compliance with the immediately preceding paragraph, the County acknowledges and represents the following:

- i A "vacancy arising under a County contract" shall mean a position that meets the following criteria: (1) the position is created and necessary because the County and Contractor have entered into this Agreement (i.e., but for such Agreement, no such position would have been created); (2) the position would require performance by a person within the physical boundaries of Miami-Dade County, Florida; and (3) the parties specifically identify the position along with the applicability of the requirements in this Article.
- ii Reports shall only be required for those quarters where a vacancy arising under this Agreement occurs, and reported information shall be limited to that permitted by applicable laws.
- iii In no event shall this Article be construed to require the Contractor to create a position where the Contractor would not have a business need for such position.
- iv The determination of whether a particular candidate is suitable is solely within the Contractor's

reasonable discretion.

ARTICLE 60. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, including by 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) 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, Florida Statutes, 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; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems 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 61. SURVIVAL

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

ARTICLE 62. FORCE MAJEURE

Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are non-exclusive list of causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The parties agree that the commercial impacts of COVID-19 are currently known to the parties, and that commercial impacts related to COVID-19 shall not constitute force majeure events.

In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

ARTICLE 63. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization

of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

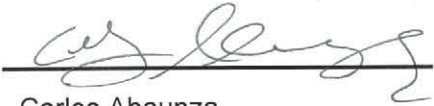
ARTICLE 64. DISCLAIMERS AND LIMITATIONS

- A. CONTRACTOR INTERNET DISCLAIMER. CONTRACTOR DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM ITS NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT THE COUNTY'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH CONTRACTOR WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, CONTRACTOR CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. EXCEPT FOR THE WARRANTIES SPECIFICALLY AND EXPRESSLY MADE HEREIN, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS, AND ALL SUCH WARRANTIES ARE DISCLAIMED.
- B. ROADMAP DISCLAIMER. THE COUNTY AGREES THAT ITS PURCHASES ARE NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY THE CONTRACTOR REGARDING FUTURE FUNCTIONALITY OR FEATURES.
- C. LIMITATION OF LIABILITY. EXCEPT FOR BREACH OF IP INFRINGEMENT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FOR ANY ONE OR MORE BREACHES OF THIS CONTRACT OR DEFAULTS HEREUNDER, THE ENTIRE AGGREGATE LIABILITY OF THE PARTY IN BREACH OR DEFAULT, AND THE EXCLUSIVE REMEDY OF THE OTHER PARTY, SHALL BE PAYMENT OF THE ACTUAL DAMAGES PROXIMATELY CAUSED BY SUCH BREACH OR DEFAULT, WHICH SHALL NOT EXCEED \$1,200,000.00. EXCEPT FOR IP INFRINGEMENT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOSSES, OR EXPENSES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND ARISING OUT OF OR RELATED TO THIS CONTRACT. THESE LIMITATIONS ON THE LIABILITY OF EITHER PARTY SHALL APPLY TO ANY AND ALL CAUSES OF ACTION THAT EITHER PARTY MAY HAVE AGAINST THE OTHER, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING A CLAIM, DEMAND OR ACTION, INCLUDING, WITHOUT LIMITATION, WHETHER IT SOUNDS IN CONTRACT OR TORT.

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

e-Builder, Inc.

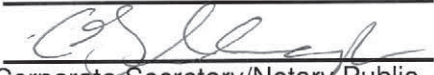
Miami-Dade County

By: 

Name: Carlos Abaunza

Title: Lead Counsel

Date: 03/07/2023

Attest: 

Corporate Secretary/Notary Public

Corporate Seal/Notary Seal



By: _____

Name: Daniella Levine Cava

Title: Mayor

Date: _____

Attest: _____

Clerk of the Board

Approved as to form
and legal sufficiency_____
Assistant County Attorney

Attachments:

Exhibit 1	Acceptable Use Policy
Appendix A	Scope of Services
Appendix A1	Functionality Specification Matrix
Appendix A2	IT Security Matrix
Appendix B	Service Level Agreement
Appendix C	Price Schedule
Appendix C1	Milestone Acceptance Form
Appendix D	Initial Project Plan and Resource Allocation Plan
Appendix E	Implementation Timeline
Appendix F	Training Plan

EXHIBIT 1. Acceptable Use Policy

1. **SCOPE.** This Acceptable Use Policy ("AUP") is incorporated into and forms a part of the Agreement between the County and Contractor, and governs the County's and each of the County's user's use of the Licensed Software. The terms "you" and "your" refer to the County or the County's User who is accessing and using the Licensed Software. The purpose of this AUP is to delineate the type of actions and content that are contrary to Contractor's mission and philosophies as well as to ensure that your use of the Licensed Software is in compliance with these standards and applicable laws and regulations. Any capitalized terms that are not defined in this AUP are defined in the applicable Contract.
2. **USER CONDUCT.** This AUP is intended to protect the Licensed Software, employees, officers, agents, and customers of Contractor, and any users of the Licensed Software, from improper, inappropriate, abusive, or illegal activity. The prohibited uses described in Section 3 below are intended as general guidelines regarding improper and inappropriate conduct and should not be interpreted as an exhaustive list.
3. **PROHIBITED USES.**
 - a. The County may not intentionally use the Licensed Software for any transmission, distribution, retrieval, or storage of any data or other material in violation of any applicable laws or regulations. This prohibition includes, without limitation, material or data protected by copyright, trademark, trade secret, or other intellectual property or privacy right that is used without proper authorization, and material that is obscene, defamatory, or otherwise harmful or threatening, or violates export control laws. The County may not intentionally use the Licensed Software to violate any system or network security, which may result in criminal or civil liability.
 - b. You may not knowingly engage, without limitation, in the following activities:
 - i. Gaining unauthorized access to, or attempting to compromise the normal functioning, operation, or security of, any network, system, computing facility, equipment, data, or information;
 - ii. Engaging in any activity or behavior that may interfere with the ability of others to access or use the Licensed Software, or that is likely to result in retaliation against the Licensed Software, other users or customers of Contractor, or Contractor's employees, officers, or other agents, including, without limitation, anything that results in any server being the target of a denial of service attack;
 - iii. Monitoring any data, information, or communications on any network or system without authorization, or attempting to intercept, redirect, or otherwise interfere with communications intended for others;
 - iv. Gaining or attempting to gain unauthorized access to accounts, passwords, devices, or networks without permission, or purposely altering or forging anyone's identity to gain such access, or concealing, forging, or otherwise falsifying identities in connection with any use of the Licensed Software;
 - v. Transmitting any advertising, promotional materials, contests, surveys, or any other form of solicitation or mass messaging, whether commercial in nature or not;
 - vi. Licensing, sublicensing, selling, renting, or otherwise commercially exploiting the Licensed Software to any third party, other than authorized users, in furtherance of the applicable County's internal business purposes as expressly permitted by the Agreement;
 - vii. Intentionally transmitting files or messages containing computer viruses or propagating worms, Trojan horses, or "spyware" programs; or
 - viii. Load testing, probing, scanning, penetration, or vulnerability testing of the Licensed Software.
4. **COUNTY RESPONSIBILITIES.** County is responsible for the activities of its users and will ensure that its users abide by this AUP. Complaints about County's users will be forwarded to County's administrator for action, consistent with applicable law. If suspected violations of this AUP occur, Contractor reserves the right to exercise the provisions of Article 6 of the Agreement.
5. **COOPERATION WITH INVESTIGATIONS.** Contractor will cooperate with appropriate law enforcement and other governmental agencies and other parties involved in investigating claims of illegal or inappropriate activity. This cooperation may include disclosing appropriate County information. Contractor shall have no liability to you or any third party for any actions taken in connection with such cooperation. You must assist Contractor in these matters when required by law.
6. **NOTIFICATION OF VIOLATION.** If you become aware of any violation of this AUP by any person, including Users or third parties, you must immediately notify Contractor via email at Support@e-Builder.net , or, if applicable, through County's designated account manager.