

ISSUING DEPARTMENT INPUT DOCUMENT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

New OTR Sole Source Bid Waiver Emergency Previous Contract/Project No. N/A

Contract
 Re-Bid Other – Access of Other Entity Contract LIVING WAGE APPLIES: YES NO

Requisition No./Project No.: BW-10379 TERM OF CONTRACT 2 YEAR(S) WITH 0 YEAR(S) OTR

Requisition /Project Title: Fare Collection Application Consultant

Description: DTPW requires support from a consultant for the development of the Fare Collection Application (software) contract. The Consultant shall conduct services in phases as follows: 1) Review of Minimum Technical Requirements and Specifications; 2) Advise on drafting RFP Documents; 3) assist with proposal evaluation; and 4) consult during negotiations. The Consultant will recommend, and establish upon DTPW approval, a project governance structure that is aligned with the County's organizational structure and with industry standard project management procedures.

Issuing Department: DTPW Contact Person: Beth Goldsmith Phone: 786-469-6456

Estimate Cost: \$248,000.00 Funding Source: DTPW Op. GENERAL FEDERAL OTHER

ANALYSIS

Commodity Codes:	<u>91829</u>	<u>91842</u>		
Contract/Project History of previous purchases three (3) years				
Check here <input type="checkbox"/> if this is a new contract/purchase with no previous history.				
	<u>EXISTING</u>	<u>2ND YEAR</u>	<u>3RD YEAR</u>	
Contractor:				
Small Business Enterprise:				
Contract Value:				
Comments:				

Continued on another page (s): YES NO

RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
SBE				

Basis of Recommendation:

Signed: Brian Webster Date sent to SBD: 10/10/23
 Date returned to SPD:

**Fare Collection Application Consultant
Contract No. BW-10379**

THIS AGREEMENT for the provision of _____, made and entered into as of this _____ day of _____, 2023 by and between IMG Rebel Advisory, Inc., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 1701 Rhode Island Ave NW, Washington DC 20036 (the "Consultant"), 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") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Consultant has offered to provide consultant services for the development of the Fare Collection Application project, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A) of this Agreement; and

WHEREAS, the County desires to procure from the Consultant such fare collection services for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- b) The words "Cybersecurity Products" to mean software and hardware that include technologies, processes, and practices designed to protect information technology networks, devices, programs, and data from attack, damage, or unauthorized access.
- c) The word "Contract" or "Agreement" to mean collectively the (i) Articles, (ii) Scope of Services, (iii) Price Schedule, (iv) all other appendices and attachments hereto, and (v) all amendments issued hereto, and Consultant's Proposal.
- d) The words "Contract Manager" to mean the Chief Procurement Officer, Strategic Procurement Department, or the duly authorized representative designated to manage the Contract.
- e) The word "Consultant" to mean IMG Rebel Advisory, Inc. and its permitted successors.
- f) The word "Days" to mean calendar days.
- g) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Consultant to the Project Manager for review and approval pursuant to the terms of this Agreement.
- h) The words "Developed Works" to mean all rights, title, and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Consultant and its Subconsultants specifically for the County.
- i) The words "Heightened Security Review" to mean any and all security screening conducted on County employees with access to Cybersecurity Products or any other additional security screenings or reviews the County Mayor or County Mayor's designee determines necessary to protect the security of the County's information technology networks, devices, programs, and data.
- j) The words "Joint Venture" to mean shall mean an association of two or more persons, partnerships, corporations, or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.

- k) The words "Licensed Software" to mean the software component(s) provided pursuant to the Contract.
- l) The words Payment Card Industry Data Security Standard (PCI DSS) to mean a set of security standards designed to ensure that ALL companies/business entities/government agencies that accept, process, store or transmit credit card information maintain a secure environment.
- m) The words "Produced in the United States" to mean shall mean with respect to Cybersecurity Products, a product for which all development and production occurs in the United States.
- n) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- o) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Consultant.
- p) The words "Service" or "Services" to mean the provision of fare collection consultant services in accordance with the Scope of Services.
- q) The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm, or corporation, other than the employees of the Consultant, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Consultant and whether or not in privity of Contract with the Consultant.
- r) The word "Work" to mean all matters and things required to be done by the Consultant 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) the Agreement, and 2) Appendix A.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The terms "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.
- e) The terms "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.
- f) The titles, headings, captions, and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and

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

- b) The Consultant 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.
- c) The Consultant 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 are required by this Agreement, and the Consultant shall perform the same as though they were specifically mentioned, described, and delineated.
- d) The Consultant shall furnish all labor, materials, tools, supplies, and other items required to perform the Work necessary for the completion of this Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.
- e) The Consultant acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Consultant agrees to provide input on policy issues in the form of recommendations. The Consultant shall implement all changes in providing services hereunder as a result of a policy change implemented by the County. The Consultant agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The contract shall become effective on the date identified on the first page of this agreement and shall continue through the last day of the 2nd year, thereafter. The County may extend this Contract for up to an additional one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Consultant 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 Consultant, upon approval by the Board of County Commissioners (the "Board").

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by: (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
Attention:
Phone:
E-mail:

and

- b) to the Contract Manager:

Miami-Dade County
Strategic Procurement Department

Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900
Email: cpo@miamidade.gov

(2) To the Consultant

Attention:
Phone:
E-mail:

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

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

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

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

With respect to travel costs and travel-related expenses, the Consultant 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 8. PRICING

- a) Prices shall remain firm and fixed for the term of the Contract, including any extension periods; however, the Consultant may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.
- b) DTPW will provide payment upon successful completion of each phase as defined in the table below. This is not a time and materials engagement. All payments are contingent upon completion of required services. c
- c) The County, at its sole discretion, may decide to engage in one or any combination of the phases described herein. Completion of the services shall be measured as fulfillment of all services requested for any phase, including submission to, and final acceptance by the County of any deliverable for action.

d) The payment amounts below shall be used to use for authorized by the County:

Table 8 – Consultant Rate Schedule

Phase Description	Deliverable	Payment Amount
Development of Minimum Technical Requirements and Specifications	DTPW acceptance of final Technical Requirements and Specifications Document	\$86,800
Drafting RFP Documents	DTPW acceptance of RFP Document	\$62,000
Proposal Evaluation	Completion of final Proposal Evaluation Meeting by County Competitive Selection Committee	\$62,000
Negotiations	County receipt of an executed agreement from selected proposer for Fare Collection Application	\$37,200
Total		\$248,000

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Consultant may bill the County periodically, but not more than once per month, upon invoices certified by the Consultant pursuant to Table 8. All invoices shall be taken from the books of account kept by the Consultant, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Consultant. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust (the "Trust"), shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County (the "Code"), the time at which payment shall be due from the County or Trust shall be forty-five (45) calendar days from receipt of a proper invoice. Billings from prime contractors under services and goods contracts with the County or Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a Subconsultant goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1 and 2-8.1.1.2 of the Code. All payments due from the County or 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 Trust.

In accordance with Miami-Dade County Implementing Order No. 3-9, Accounts Receivable Adjustments, if money is owed by the Consultant to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Consultant under this Contract. Such retained amount shall be applied to the amount owed by the Consultant to the County. The Consultant 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 Consultant for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted electronically or in hard copy format by the Consultant to the County as follows:

- Electronic submission (preferred) to invsubp@miamidade.gov; or
- Hard copy format mailed to:
Miami-Dade County, Finance Shared Services
111 NW 1st Street, 26 Floor
Miami, Florida 33128

Invoice shall include a Bill to Address, which is the County department being invoiced for the services. Bill to the address provided by the Department of Transportation and Public Works

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

ARTICLE 10. INDEMNIFICATION AND INSURANCE

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

Upon County's notification, the Consultant shall furnish to the Strategic Procurement Department, certificate(s) of insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Consultant as required by Chapter 440, Florida Statutes.
2. Commercial General Liability Insurance in an amount not less than \$ per occurrence, and \$ in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$ combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$ per occurrence, \$ in the aggregate.

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 and are a member of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County
111 NW 1st Street
Suite 2340
Miami, Florida 33128-1974**

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

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the certificate of insurance is received within the specified timeframe but not in the manner prescribed in this Agreement, the Consultant shall have an additional five business days to submit a corrected certificate to the County. If the Consultant fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Consultant 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 Consultant shall assure that the certificate 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 of insurance is scheduled to expire during the term of the Contract, the Consultant shall submit new or renewed certificate of insurance to the County before such expiration. If expired certificate of insurance is/are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificate is/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 Consultant shall be responsible for all direct and indirect costs associated with such termination.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Consultant shall provide the Work 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 Consultant in all aspects of the Work. At the request of the County, the Consultant shall promptly remove from the Project any Consultant's employee, Subconsultant, or any other person performing Work hereunder. The Consultant agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Consultant.
- b) The Consultant agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for all claims, suits, actions, damages, and costs (including attorneys' fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Consultant's personnel performing Services hereunder at the behest of the County. Removal and replacement of any Consultant's personnel as used in this Article shall not require the termination and/or demotion of such Consultant's personnel.
- c) The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall comply with all provisions of all federal, state, and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES OF THE CONSULTANT

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

ARTICLE 13. INDEPENDENT CONSULTANT RELATIONSHIP

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

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

ARTICLE 14. DISPUTE RESOLUTION PROCEDURE

- a) The Consultant 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 Consultant's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Consultant shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Consultant agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Consultant must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Consultant and the Project Manager are unable to resolve their difference, the Consultant 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. 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 Consultant'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 Consultant 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 Consultant. Except as such remedies may be limited or waived elsewhere in the Agreement, Consultant reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.
- f) This Article will survive the termination or expiration of this Agreement.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the Parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of the Parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or

subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

- c) In those situations where this Agreement imposes an indemnity obligation on the Consultant, 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 Consultant fails to diligently defend such claims, and thereafter seek indemnity for such defense or settlement costs from the Consultant.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Consultant 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 Consultant and its Subcontractors and suppliers shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

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

Pursuant to Section 2-481 of the Code, the Consultant 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 Consultant agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Consultant needs to substitute personnel for the key personnel identified by the Consultant's Proposal, the Consultant must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. However, such substitution shall not become effective until the County has approved said substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Consultant causes any part of this Agreement to be performed by a Subconsultant, the provisions of this Contract will apply to such Subconsultant and its officers, agents and employees in all respects as if it and they were employees of the Consultant; and the Consultant 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 Subconsultant, its officers, agents, and employees, as if they were employees of the Consultant. The Services performed by the Subconsultant will be subject to the provisions hereof as if performed directly by the Consultant.
- b) The Consultant, before making any subcontract for any portion of the Work, will state in writing to the County the name of the proposed Subconsultant, the portion of the Work which the Subconsultant is to do, the place of business of such Subconsultant, and such other information as the County may require. The County will have the right to require the Consultant not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Consultant will inform the Subconsultant 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 Subconsultant will strictly comply with the requirements of this Contract.

- d) In order to qualify as a Subconsultant satisfactory to the County, in addition to the other requirements herein provided, the Subconsultant 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 Subconsultant must show to the satisfaction of the County that it has satisfactorily performed Work 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 Subconsultant will delay, prevent, or otherwise impair the performance of the Consultant's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Consultant shall furnish to the County copies of all subcontracts between Consultant 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 Consultant in breach of this Contract, permitting the County to request completion by the Subconsultant of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subconsultant directly for the performance by such Subconsultant. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Subconsultant hereunder as more fully described herein.

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

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

ARTICLE 22. SEVERABILITY

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

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Consultant commits an Event of Default (as defined below in Article 24) and fails to cure said Event of Default (as delineated below in Article 25), or (ii) Consultant attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a) 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 attorneys' fees.
- d) The foregoing notwithstanding, if the Contractors attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Consultant may be debarred from County contracting in accordance with the County debarment procedures. The Consultant may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code.
- e) In the event that the County exercises its right to terminate this Agreement, the Consultant shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop Work on the date specified in the notice (the "Effective Termination Date");

- ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
 - vi. reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Table 8.
- f) In the event that the County exercises its right to terminate this Agreement, the Consultant will be compensated as stated in the payment Articles herein for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.
- h) In the event the Consultant 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 24. EVENT OF DEFAULT

- a) An Event of Default is a material breach of this Agreement by the Consultant, and includes but is not limited to the following:
- i. the Consultant has not delivered Deliverables and/or Services on a timely basis;
 - ii. the Consultant has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Consultant has failed to make prompt payment to Subcontractors or suppliers for any Services;
 - iv. the Consultant has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Consultant's creditors, or the Consultant has taken advantage of any insolvency statute or debtor/creditor law or if the Consultant's affairs have been put in the hands of a receiver;
 - v. the Consultant has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Consultant has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Consultant has failed in the representation of any warranties stated herein; or
 - viii. the Consultant fails to comply with Article 39.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Consultant's ability to perform the Work or any portion thereof, the County may request that the Consultant, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Consultant's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the

compensation received by the Consultant for portions of the Work which the Consultant has not performed. In the event that the Consultant 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 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall notify the Consultant (the "Default Notice"), specifying the basis for such default, and advising the Consultant that such default must be cured immediately, or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Consultant to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Consultant 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 Consultant shall discontinue the Work upon the Effective Termination Date.

ARTICLE 26. 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 Consultant shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, including but not limited to:

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

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

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall have the obligation to, at the County's option to (i) modify, or require that

the applicable Subconsultant 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 Consultant's expense, the rights provided under this Agreement to use the item(s).

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

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Consultant 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 Confidential Information and may not, without the prior written consent of the County, be used by the Consultant or its employees, agents, Subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Consultant nor its employees, agents, Subcontractors, or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Consultant expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state, or local law in regard to the privacy of individuals.
- b) The Consultant shall advise each of its employees, agents, Subcontractors, and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or Subconsultant's or supplier's employees, present or former. In addition, the Consultant agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) In the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Consultant shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Consultant 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 Consultant shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of the public records laws of the State of Florida (the "Public Records Law").

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

During the term of the Contract, the Consultant 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 Consultant and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the

contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers, and all information technology software.

The Consultant will report to the County any information discovered or which is disclosed to the Consultant 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 Consultant's authority to prevent improper use, disclosure, or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Consultant 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 Consultant hereunder or furnished by the Consultant to the County and/or created by the Consultant for delivery to the County, even if unfinished or in process, as a result of the Services the Consultant performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Consultant as well as its employees, agents, Subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Consultant shall not, without the prior written consent of the County, use such documentation on any other project in which the Consultant or its employees, agents, Subcontractors, or suppliers are or may become engaged. Submission or distribution by the Consultant to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All Developed Works shall become the property of the County.
- c) Accordingly, neither the Consultant nor its employees, agents, Subcontractors, or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of the Consultant, or any employee, agent, Subconsultant or supplier thereof, without the prior written consent of the County, except as required for the Consultant's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Consultant and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Consultant hereby grants, and shall require that its Subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation, or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. SUPPLIER/VENDOR REGISTRATION/CONFLICT OF INTEREST

- a) **Supplier/Vendor Registration**
The Consultant shall be a registered vendor with the County – Strategic Procurement Department, 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 Consultant'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/Consultant 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 Consultant confirms its commitment to comply with the vendor registration requirements and the associated affidavits available in **INFORMS** at <https://supplier.miamidade.gov>.

- 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 32. INSPECTOR GENERAL REVIEWS

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 Consultant 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 Consultant'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 Consultant, 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 Consultant in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Consultant or any third party.

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 Consultant. The audit cost shall also be included in all change orders 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 Board; (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 change orders 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 Consultant, 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 Consultant from the Inspector General or IPSIG retained by the Inspector General, the Consultant 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 Consultant's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful Subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

As applicable, Consultant 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 by Executive Order 11375, and, implementing regulations at 41 C.F.R. Part 60.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act of 1955, as amended, (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act, as amended(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 Ordinance".
- 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) 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).
- l) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- m) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".
- n) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".

- o) Any other laws prohibiting wage rate discrimination based on sex.
- p) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- q) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- r) 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".

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Consultant is certifying that the Consultant is in compliance with, and will continue to comply with, the provisions of items "j" through "o" above.

The Consultant 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 Consultant for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Consultant. The Project Manager shall verify the certification(s), license(s), and permit(s) for the Consultant prior to authorizing Work and as needed.

Notwithstanding any other provision of this Agreement, Consultant 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 Consultant, constitute a violation of any law or regulation to which Consultant is subject, including but not limited to laws and regulations requiring that Consultant conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Consultant agrees to not discriminate unlawfully against any employee or applicant for employment on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 35. CONFLICT OF INTEREST

The Consultant 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 Consultant in this Agreement. This Agreement is entered into by the Consultant 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 Consultant directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, Deliverables 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 Consultant or to the best of the Consultant's knowledge any Subconsultant or supplier to the Consultant.
- c) Neither the Consultant nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Consultant shall have an interest which is in conflict with the Consultant'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 Consultant 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 Consultant 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, Consultant shall promptly bring such information to the attention of the Project Manager. Consultant shall thereafter cooperate with the County's review and investigation of such information and comply with the instructions Consultant receives from the Project Manager regarding remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Consultant 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 Consultant first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any Consultant, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Work to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Consultant and its employees, agents, Subcontractors, and suppliers will not represent, directly or indirectly, that any Work, Deliverables or Services provided by the Consultant or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County may terminate this Contract, if, during the term of any contract the Consultant has with the County, the Consultant 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 Consultant under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

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

ARTICLE 39. 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 Consultant 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. Consultant participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

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

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

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

c) Consultant Compliance

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

ARTICLE 40. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

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

ARTICLE 41. FORCE MAJEURE

Under applicable law, shall refer to an act of nature (such as, but not limited to, a hurricane, flood, and/or earthquake), war, terrorism, riot, sovereign conduct, strikes, lockouts, fires, epidemics and/or pandemic, adverse governmental conditions or conduct of third parties.

Neither the County nor the Consultant shall be held liable or responsible to the counterparty nor be deemed to have defaulted under or breached this Contract for failure or delay in performing any obligation under this Contract when such failure or delay is caused by an act of Force Majeure. Within twenty-four (24) hours of the occurrence of an act of Force Majeure, the affected party shall notify the counterparty of the act by sending an e-mail message to the Project Manager of the other party. In addition, the affected party shall provide to the counterparty within seven days of determining the cause of the Force Majeure, a written explanation via e-mail concerning the circumstances that caused the act of Force Majeure and the overall impacts to the Contract. Upon receipt of the written explanation, the parties shall mutually agree to any contractual modifications as necessary to continue the Contract with minimal impact to County operations. The County maintains the right to terminate the Contract for convenience or obtain the goods and/or services through a separate contract, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 42. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, for all contracts for goods and services, the Consultant, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF 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 CSSF. If no suitable candidates can be employed after a Referral Period of three to five days, the Consultant is free to fill its vacancies from other sources. Consultant will be required to provide

quarterly reports to the CSSF 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 Consultant 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 First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 43. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Consultant 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 Consultant 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 CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'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 44. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION (Use if applicable and include the Business Associate Agreement)

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

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

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

ARTICLE 45. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Consultant and its Subcontractors are jointly and severally obligated to comply with the provisions of Section 448.095, Florida Statutes, as amended, titled "Employment Eligibility." The Consultant affirms that (a) it has registered and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the Consultant; (b) it has required all Subcontractors to this Contract to register and use the E-Verify system to verify the work authorization status of all new employees of the Subconsultant; (c) it has an affidavit from all Subcontractors to this Contract attesting that the

Subconsultant does not employ, contract with, or subcontract with, unauthorized aliens; and (d) it shall maintain copies of any such affidavits for duration of the Contract. Registration information is available at: <http://www.uscis.gov/e-verify>

If County has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, then County shall terminate this contract in accordance with Section 448.095(5)(c), Florida Statutes. In the event of such termination the Consultant agrees and acknowledges that it may not be awarded a public contract for at least one (1) year from the date of such termination and that Consultant shall be liable for any additional costs incurred by the County because of such termination.

In addition, if County has a good faith belief that a Subconsultant has knowingly violated any provisions of Sections 448.09(1) or 448.095, Florida Statutes, but Consultant has otherwise complied with its requirements under those statutes, then Consultant agrees that it shall terminate its contract with the Subconsultant upon receipt of notice from the County of such violation by Subconsultant in accordance with Section 448.095(5)(c), Florida Statutes.

Any challenge to termination under this provision must be filed in the Circuit or County Court by the County, Consultant, or Subconsultant no later than twenty (20) calendar days after the date of contract termination.

ARTICLE 51. 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 Consultant and the County under this Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date identified on the first page of this agreement,

IMG Rebel Advisory, Inc.

Miami-Dade County

By: _____

By: _____

for

Name: _____

Name: Daniella Levine Cava

Title: _____

Title: Mayor

Date: _____

Date: _____

Attest: _____

Attest: _____

Corporate Secretary/Notary Public

Juan Fernandez-Barquin
Clerk of the Court and Comptroller

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney

Attachment:
A – Scope of Services

Attachment A

CONTRACT NO. BW-10379 FARE COLLECTION APPLICATION CONSULTANT

SCOPE OF SERVICES

1. Project Background and Purpose

Miami-Dade County's Department of Transportation and Public Works ("DTPW") is the largest transit agency in the State of Florida. It provides public transportation via its transit system in four modes: Metrobus, Metrorail, Metromover, and Special Transportation Service. As the department continues to carry out the vision to be the world's best provider of transportation services, it is critical to deploy the best available technology to enhance operation. Successful fare collection is critical to the operation of DTPW's transit system.

To modernize existing operations, DTPW will be soliciting a Request for Proposals (RFP) to obtain a new account-based Fare Collection Application (via a Software as a Service model) to replace its existing legacy Fare Collection System provided by Cubic Corporation. The core objectives of this project are to deploy a next-generation, multimodal Fare Collection Application that drives customer adoption and improves existing fare collection operations and reporting. The existing in-scope transit system consists of a fixed-route Metrobus service, Metrorail, Paratransit/STS service, On-demand service, and Metromover. The Fare Collection Application RFP is also expected to include stand-alone validators.

Separately from the Fare Collection Application, DTPW has an advertised RFP for Fare Collection Equipment, inclusive of fare gates, ticket vending machines, and fare box equipment that are non-proprietary to the Fare Collection Application. The scope of this engagement does not include services related to the Fare Collection Equipment RFP.

2. Project Methodology

The Consultant shall provide expertise in project management, analysis, documenting of functional and technical requirements, developing RFPs, evaluating RFP responses and in providing overall assistance throughout the procurement process specifically for selecting Fare Collection solutions. The County anticipates advertisement of the RFP in November 2023, evaluations completed in first quarter 2024, negotiations in second and third quarter 2024, with award in late 2024.

The Consultant shall conduct services in phases as follows and further detailed in Section 3 below: A) Review of Minimum Technical Requirements and Specifications; B) Advising on Drafting RFP Documents; C) Proposal Evaluation; and D) Negotiations. The Consultant shall recommend, and establish upon DTPW approval, a project governance structure that is aligned with the County's organizational structure and with industry standard project management procedures. A governance structure should be used that includes roles and responsibilities of the Consultant and participating County departments to insure issues are addressed in a timely manner through an escalation process. The Consultant shall organize work, assign individual tasks to operational and technical stakeholders and coordinate project activities as required.

In order to mitigate risk, the Consultant will monitor timeline, scope, and budget of this engagement in order for the County to meet the operational requirement for system implementation prior to sunsetting the existing system. The Consultant shall develop and manage a project schedule inclusive of all tasks for all cross-functional teams, including participants from DTPW and the Information Technology Department. The Consultant shall track assigned tasks to ensure that activities stay within schedule. The Consultant shall provide a communication plan detailing how progress will be reported to all levels of the adopted governance structure.

3. Required Services and Project Phases

A. Development of Minimum Technical Requirements and Specifications:

County operational and technical staff have begun documenting operational and technical requirements for the Application in preparation for the development of the RFP. At a minimum, the following services related to Development of Minimum Technical Requirements and Specifications are required:

- Conduct site visits to Miami-Dade County facilities to understand logistics and current operating environment as outlined in Exhibit 1, Information Technology Department's Technology Model.

- Advise on procurement strategy
- Review, provide feedback, and make recommendations in the following areas:
 - Functional and technical requirements
 - Use cases
 - Reporting requirements
 - Interoperability requirements
 - Telecommunication/security requirements
 - Interface/integration requirements
 - Data Conversion requirements in transition from card to account based system
 - Training requirements
 - System availability requirements
 - Performance and capacity requirements
 - Data retention requirements
 - Continuity of operations requirements
 - Maintenance and Support Services
 - Evaluation Criteria
- Review and assess existing architectural and data flow diagrams. If warranted, make recommendations to reorganize architectural and data flow diagrams to simplify the future system
- Identify and notify the County of any other areas of concern within the Fare Collection industry or opportunities to leverage (Ex: change in technologies, change in standards, etc.)

B. Drafting RFP Documents

The Consultant shall be responsible for assisting in drafting a comprehensive RFP for the procurement of a new Fare Collection Application in a manner consistent with County formats and standards. The document shall be compliant with the Strategic Procurement Department standards as well as the County's procurement legislation and policies. The Consultant shall provide templates, assessment documents, and reports for the County's consideration to be included in the RFP.

C. Proposal Evaluation:

At a minimum, the following services related to Proposal Evaluation are required:

- Provide templates to document and assist in assessment of proposals received.
- Assist in the drafting of reference questions.
- Provide feedback when requested by the Competitive Selection Committee to assist the County in analyzing written proposals and oral presentations.
- Assist the County in developing materials and pertinent questions that may be provided to potential proposers for oral presentations that may be conducted as part of the RFP evaluation process.
- Assess and provide recommendations for use cases/workflows developed by the County for Solution demonstrations/oral presentations to demonstrate critical operational scenarios as part of the RFP evaluation process.
- Compile documents and compose reports to be presented the Competitive Selection Committee to document oral presentation questions, answers, and findings as requested.

D. Negotiations:

As part of the RFP process, the County will conduct negotiations with one or more recommended proposers in order to achieve a resultant contract to be recommended for award. At a minimum, the following services related to Negotiations are required:

- Assist the County in review of the proposed development of deliverables, implementation approach, acceptance criteria, and payment milestones to be incorporated into the resultant contract.
- Review and provide an assessment of any exceptions to the County's terms and conditions included in the proposal from the recommended proposer(s).
- Review and provide an assessment of the proposed pricing from recommended proposer(s). When considering pricing, Consultant will take into consideration the ability of Proposer to adhere to RFP requirements, implementation approach, constraints, assumptions and terms and conditions being proposed.
- Conduct an assessment of the draft Scope of Services provided by the recommended proposer(s) and provide summary reports to the County to address gaps identified in the evaluation. This assessment should take into consideration any further details in functionality as revealed during the evaluation process, including oral presentations.

Any need for customization should be identified for possible inclusion in the resultant contract to be discussed during negotiations, as determined necessary by the County.

- Provide resource allocation recommendations for County validated with vendor to be utilized during the implementation.