

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

Rev 1

**New contract**   
  **OTR**   
  **CO**   
  **SS**   
  **BW**   
  **Emergency**   
 Previous Contract/Project No. **BW8747-1/12-1**

**Re-Bid**   
  **Other**   
 LIVING WAGE APPLIES:    YES XX NO

Requisition/Project No:   RQCLI300002        TERM OF CONTRACT:   5   years with no options-to-renew

Requisition/Project Title:-   Microfilm Storage and Management Services  

Description:   Microfilm storage, retrievals, re-files, withdrawal, delivery, pick-up, reporting and miscellaneous related services.  

User Department(s):   Clerk of the Court, MDPD  

Issuing Department:   ISD/PM      Contact Person:   Kristina Guillen      Phone:   (305)375-3248  

Estimated Cost:   \$132,500.00      Funding Source:   Proprietary Revenue / General Funds      REVENUE GENERATING:   

**ANALYSIS**

Commodity/Service No: <u>  962-95  </u> SIC: <u>  </u>	
<b>Trade/Commodity/Service Opportunities</b>	
Contract/Project History of Previous Purchases For Previous Three (3) Years Check Here <input type="checkbox"/> if this is a New Contract/Purchase with no Previous History	
EXISTING                                      2 <sup>ND</sup> YEAR                                      3 <sup>RD</sup> YEAR	
Contractor:	Iron Mountain Information Management, Inc.
Small Business Enterprise:	No Measures
Contract Value:	\$25,878.27
Comments:	
Continued on another page (s): <u>  </u> Yes <u>  XX  </u> No	

**RECOMMENDATIONS**

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

Basis of Recommendation:

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Signed:   Kristina Guillen  

Date to SBD:   3/4/2013  

Date Returned to DPM:   

RECEIVED  
 DEPT. BUSINESS DEV.  
 2013 MAR -5 PM 3:33

Contract No. \_\_\_\_\_

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between Iron Mountain Information Management, Inc., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 1137 Branchton Road, Boyers, PA 16020 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

**WITNESSETH:**

WHEREAS, the Contractor has offered to provide Microfilm Storage and Management Services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A), Price Schedule (Appendix B) and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County desires to procure from the Contractor such Microfilm Storage and Management Services, for the County, in accordance with the terms and conditions of this Agreement;

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

**ARTICLE 1. DEFINITIONS**

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), Price Schedule (Appendix B) all other appendices and attachments hereto, all amendments issued hereto and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Iron Mountain Information Management, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

**ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, and 2) Appendices of these terms and

conditions; the Scope of Services (Appendix A), and Price Schedule (Appendix B), and any attachments thereof.

**ARTICLE 3. RULES OF INTERPRETATION**

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

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any

and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

**ARTICLE 5. CONTRACT TERM**

The Contract shall become effective on the date stated on the first page of this agreement and shall continue throughout the last day of the sixtieth month. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

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

**(1) to the County**

a) to the Project Manager:

Miami-Dade County  
Clerk of Courts  
9350 NW 12<sup>th</sup> Avenue  
Miami, FL 33172  
Attention: Roderick Days, Records Management Specialist 2  
Phone: 305-593-1352  
E-mail: RODD@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Procurement Management Division  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Attention: Assistant Director  
Phone: (305) 375-5548  
Fax: (305) 375-2316

**(2) To the Contractor**

Iron Mountain Information Management, Inc.  
1137 Branchton Road

Boyers, PA 16020  
Attention: Debby Baptiste  
Phone: 724-794-7322  
Fax: 724-794-2838  
E-mail: dbaptiste@ironmountain.com

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

#### **ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

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

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

#### **ARTICLE 8. PRICING**

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

#### **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

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

Miami-Dade County  
Clerk of Courts Procurement Management Unit  
140 West Flagler Street, Room 1501  
Miami, FL 33130  
Attention: Frank Detz

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**

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

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs

(including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES OF THE CONTRACTOR**

- a) All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.
- b) Pursuant to Section 2-2092 of the County Code, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under this contract, shall make good faith efforts as determined by the County to fill a minimum of 50% of its employment needs under this contract through the South Florida Workforce Board, or other designated Referral Agency. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor shall provide quarterly reports to the Referral Agency indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected.

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and



control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

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

#### **ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

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

Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

**ARTICLE 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 both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

**ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

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

**ARTICLE 17. AUDITS**

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

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

**ARTICLE 18. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

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

**ARTICLE 19. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 20. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND**

**EXPLANATIONS**

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

**ARTICLE 21. 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 22. TERMINATION AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
  - i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the

- performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
- v. take no action which will increase the amounts payable by the County under this Agreement; and
  - f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
    - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
    - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
  - g) All compensation pursuant to this Article is subject to audit.

### **ARTICLE 23. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
  - i. the Contractor has not delivered Deliverables on a timely basis;
  - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
  - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed.

In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:

- i. treat such failure as a repudiation of this Agreement; and
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **ARTICLE 24. NOTICE OF DEFAULT - OPPORTUNITY TO CURE**

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

#### **ARTICLE 25. REMEDIES IN THE EVENT OF DEFAULT**

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

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

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

#### **ARTICLE 26. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights,

trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

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

#### **ARTICLE 27. CONFIDENTIALITY**

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

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

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

**ARTICLE 28. PROPRIETARY INFORMATION**

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

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

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

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

**ARTICLE 29. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the



Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

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

**ARTICLE 30. VENDOR REGISTRATION/CONFLICT OF INTEREST****a) Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2-8-1(d)(2) of the County Code)
3. **Miami-Dade Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**  
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**  
(Ordinance 97-35)
12. **Subcontractor /Supplier Listing**  
(Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging**  
(Resolution R-738-92)
14. **W-9 and 8109 Forms**  
(as required by the Internal Revenue Service)
15. **FEIN Number or Social Security Number**  
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
  - Identification of individual account records
  - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
  - Tax reporting purposes
  - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. **Office of the Inspector General**  
(Section 2-1076 of the County Code)
17. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. **Antitrust Laws**  
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

**b) Conflict of Interest**

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## ARTICLE 31. INSPECTOR GENERAL REVIEWS

### Independent Private Sector Inspector General Reviews

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

### Miami-Dade County Inspector General Review

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

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

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

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

### **ARTICLE 32. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

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

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

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the

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

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

### **ARTICLE 33. NONDISCRIMINATION**

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

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

### **ARTICLE 34. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the

Contractor's knowledge any subcontractor or supplier to the Contractor.

- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 35. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

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

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

#### **ARTICLE 36. BANKRUPTCY**

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

**ARTICLE 37. GOVERNING LAW**

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

**ARTICLE 38. COUNTY USER ACCESS PROGRAM (UAP)**

**a) User Access Fee**

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

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

**b) Joint Purchase**

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

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

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

**c) Contractor Compliance**

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

**ARTICLE 39. FIRST SOURCE HIRING REFERRAL PROGRAM**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the Program are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407.

**ARTICLE 40. SURVIVAL**

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

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

Contractor

Miami-Dade County

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

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

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

Name: Carlos A. Gimenez

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

Title: Mayor

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

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

Attest: \_\_\_\_\_  
Corporate Secretary/Notary Public

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

Corporate Seal/Notary Seal

Approved as to form  
and legal sufficiency

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



## APPENDIX A

### SCOPE OF SERVICES

1. **Background:** Miami-Dade County, hereinafter referred to as the County, on behalf of the Clerk of the Circuit and County Courts (Clerk) is contracting for microfilm storage and management services to include a secure, climate controlled storage facility and professionally trained staff to handle film in accordance with federal, state and local retention rules and regulations.

2. **Services to be Provided:**

The Contractor shall:

- a. Provide storage of the County's vital microfilm records within a 1,416 cubic ft. private underground vault.
- b. Receive and enter cartons and/or open shelf files.
- c. Provide retrieval of items from, or return of items to, storage as requested by the Clerk.
- d. Provide archival destruction services to include retrieval, preparation, documentation, and secure shredding of items stored at Contractor's facility. Upon written authorization of the archival destruction by the Clerk, the Contractor shall proceed with these services. Rates are pursuant to Appendix B, Price Schedule, Section C.
- e. Retrieve, prepare and document the permanent withdrawal of records from Contractor's facilities pursuant to rates in Appendix B, Price Schedule, Section D.
- f. Provide rates for pickup and delivery services from shipping companies. Upon written approval of the rates and written authorization for the delivery or pick up by the Clerk, the Contractor shall proceed with these services. The handling fees are specified in Appendix B, Section E.
- g. Provide the Clerk, upon the Clerk's request, rates for reports to include special sorting and special file listings subject to the computer listing charge and/or set-up, reporting and download fees. Monthly Supplemental Reports are included in the storage rate pursuant to Appendix B, Price Schedule, Section A. Upon written approval of the rates and written authorization for reports from the Clerk, the Contractor shall proceed with these services.
- h. Provide related, additional services upon request by the Clerk. Charges for services not specifically listed under this contract will be billed to the County at an hourly labor rate, in fifteen minute increments, pursuant to Appendix B, Section F. The services must be authorized by the Clerk. The Clerk may request an estimate including the hours required, materials and approximate total price before authorizing these services. The Contractor shall provide an estimate at no charge to the Clerk.

**APPENDIX B  
PRICE SCHEDULE**

**A. STORAGE RATES:**

<b>Contract Period</b>	<b>Rate Per Cubic Foot</b>	<b>Monthly Rate</b>	<b>Annual Charges (Rate Per Cubic Foot x 1,416)</b>
YEAR 1	.708	\$1,002.94	\$12,035.28
YEAR 2	.743	\$1,053.09	\$12,637.08
YEAR 3	.759	\$1,074.15	\$12,889.80
YEAR 4	.774	\$1,095.63	\$13,147.56
YEAR 5	.789	\$1,117.54	\$13,410.48

NOTE: This is a leased private vault space; the monthly rate is minimum storage charge. Items B through F are billed only as the services are utilized; the storage rate is the only line item billed monthly.

**B. Rates for Receiving, Retrievals, Inter-Files and Re-Files**

**1. Receiving and Entering Cartons and/or Open Shelf Files:**

<b>Contract Period</b>	<b>Rate Per Cubic Foot</b>
YEAR 1	\$2.04
YEAR 2	\$2.14
YEAR 3	\$2.18
YEAR 4	\$2.33
YEAR 5	\$2.27

**2. Regular Retrieval/ Re-file - Carton**

<b>Contract Period</b>	<b>Rate Per Cubic Foot</b>
YEAR 1	\$3.21
YEAR 2	\$3.37
YEAR 3	\$3.44
YEAR 4	\$3.51
YEAR 5	\$3.58

**3. Regular Retrieval/Re-file – File from Carton**

<b>Contract Period</b>	<b>Rate Per Cubic Foot</b>
YEAR 1	\$3.21
YEAR 2	\$3.37
YEAR 3	\$3.44
YEAR 4	\$3.51
YEAR 5	\$3.58

**4. Regular Interfile – Carton/ File**

(Requests received by 3pm EST are sent the next business day.)

<b>Contract Period</b>	<b>Rate Per Cubic Foot</b>
YEAR 1	\$3.21
YEAR 2	\$3.37
YEAR 3	\$3.44
YEAR 4	\$3.51
YEAR 5	\$3.58

**5. Rush Retrieval – Carton / File**

(Requests received by 3pm EST are sent the same business day.)

<b>Contract Period</b>	<b>Rate Per Cubic Foot</b>
YEAR 1	\$3.21
YEAR 2	\$3.37
YEAR 3	\$3.44
YEAR 4	\$3.51
YEAR 5	\$3.58

**C. Rates for Archival Destruction**

<b>Contract Period</b>	<b>Rate per Pound for Microforms</b>
YEAR 1	\$0.75
YEAR 2	\$0.75
YEAR 3	\$0.75
YEAR 4	\$0.75
YEAR 5	\$0.75

**D. Rates for Permanent Withdrawal:**

<b>Contract Period</b>	<b>Cubic Foot/Regular Retrieval Charge</b>
YEAR 1	\$3.06
YEAR 2	\$3.21
YEAR 3	\$3.27
YEAR 4	\$3.34
YEAR 5	\$3.41

**E. Delivery and Pick-up Handling Fee:** Refer to Appendix A, item # f.

<b>Contract Period</b>	<b>Shipping / Courier Handling Fee per Transaction</b>
YEAR 1	\$4.20
YEAR 2	\$4.20
YEAR 3	\$4.28
YEAR 4	\$4.37
YEAR 5	\$4.46

**F. Additional Services:** The hourly rates for providing any additional services are provided below:

<b>Contract Period</b>	<b>Hourly Labor Rate</b>
YEAR 1	\$38.68
YEAR 2	\$38.68
YEAR 3	\$39.45
YEAR 4	\$40.25
YEAR 5	\$41.05

**NOTES:**

1. Notwithstanding the proposed hourly rates for additional services, the Clerk reserves the right to negotiate the final pricing on a project by project basis, at the Clerk's sole discretion.
2. Rates and fees for extension periods will be at the then current rates and fees.



Miami-Dade County  
Internal Services Department  
**Affirmation of Vendor Affidavits**

In accordance with Ordinance 07-143 amending Section 2-8.1 of the Code of Miami-Dade County, effective June 1, 2008, vendors are required to complete a new Vendor Registration Package, including a Uniform Affidavit Packet (Vendor Affidavits Form), before being awarded a new contract. The undersigned affirms that the Vendor Affidavits Form submitted with the Vendor Registration Package is current, complete and accurate for each affidavit listed below.

**Contract No. :** \_\_\_\_\_ **Federal Employer Identification Number (FEIN):** \_\_\_\_\_

**Contract Title:** \_\_\_\_\_

**Affidavits and Legislation/ Governing Body**

1.	<b>Miami-Dade County Ownership Disclosure</b> Sec. 2-8.1 of the County Code	6.	<b>Miami-Dade County Vendor Obligation to County</b> Section 2-8.1 of the County Code
2.	<b>Miami-Dade County Employment Disclosure</b> County Ordinance No. 90-133, amending Section 2.8-1(d)(2) of the County Code	7.	<b>Miami-Dade County Code of Business Ethics</b> Article 1, Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and County Ordinance No 00-1 amending Section 2-11.1(c) of the County Code
3.	<b>Miami-Dade County Employment Drug-free Workplace Certification</b> Section 2-8.1.2(b) f the County Code	8.	<b>Miami-Dade County Family Leave</b> Article V of Chapter 11 of the County Code
4.	<b>Miami-Dade County Disability Non-Discrimination</b> Article 1, Section 2-8.1.5 Resolution R182-00 amending R-385-95	9.	<b>Miami-Dade County Living Wage</b> Section 2-8.9 of the County Code
5.	<b>Miami-Dade County Debarment Disclosure</b> Section 10.38 of the County Code	10.	<b>Miami-Dade County Domestic Leave and Reporting</b> Article 8, Section 11A-60 11A-67 of the County Code

Printed Name of Affiant	Printed Title of Affiant	Signature of Affiant
Name of Firm		Date
Address of Firm	State	Zip Code

**Notary Public Information**

Notary Public – State of \_\_\_\_\_ County of \_\_\_\_\_

**Subscribed and sworn to** (or affirmed) before me this \_\_\_\_\_ day of, \_\_\_\_\_ 20 \_\_\_\_\_

by \_\_\_\_\_ He or she is personally known to me  or has produced identification

Type of identification produced \_\_\_\_\_

Signature of Notary Public	Serial Number
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Print or Stamp of Notary Public	Expiration Date	Notary Public Seal
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Justification/Input Document for "Bid Waiver"

ITB #

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

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

Purchase Requisition No. RAQCL1300002 Contract # \_\_\_\_\_ Date Required: 5/1/2013 Est. Value: 90,000.00


Proposed Vendor: Iron Mountain Informator Previous Contract #: BW6747-1/12-1 Estimated Cost: \$90,000.00 BCC Date: \_\_\_\_\_

**Purpose of the purchase** Please describe your minimum requirements and the benefits of making the acquisition. To provide a 5 year contract for underground storage of microfilm records that are subject to vinegar syndrome which will destroy the image on the film. The needed underground storage are \$ 1416 cu ft. for the period covering 5/1/13 thru 4/30/18 per Schedule A dated 12/5/2012. This schedule provides pricing for five years.

**Best interest of the County** Please give a detailed description why a waiver of normal bidding is in the county's best interest. The Clerk of Courts has stored the microfilm records at the Iron Mountain storage facility since April 1997. The cost to remove and return the stored records is not cost effective to Clerk of Courts and could cause damage to the existing records if they are removed from the environmentally controlled atmosphere.

**Market Research** Please describe your market research and the results thereof. This should include a description of other similar sources of products available in the market (if any) and why they are not acceptable.

**Proposed Actions** Please describe the actions the department will take to overcome the present barrier to competition prior to any future acquisitions of this product.

Charis Lubeck (305) 375-2060  
Contact Person and Phone # \_\_\_\_\_  
  
Department Director's Approval  
Date Approved \_\_\_\_\_