

ISSUING DEPARTMENT INPUT DOCUMENT

CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

New
 OTR
 Sole Source
 Bid Waiver
 Emergency
 Previous Contract/Project No. RFP775-3(3)

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

Requisition No./Project No.: RQID2100227
 TERM OF CONTRACT 5 YEAR(S) WITH YEAR(S) OTR

Requisition /Project Title: FleetFocus Licenses, Maintenance, and Support Services

Description: This contract will be for the maintenance and support services for the FleetFocus software. In addition, the department will be able to order products and services if needed.

Issuing Department: ISD
 Contact Person: Brandon Nealey
 Phone: 305-375-4884

Estimate Cost: \$612,000

Funding Source:
 GENERAL
 FEDERAL
 OTHER

ANALYSIS

Commodity Codes:	<u>920-45</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:	<u>AssetWorks LLC</u>			
Small Business Enterprise:				
Contract Value:	<u>\$1,354,871.88</u>			
Comments: <u> </u>				
Continued on another page (s): <input type="checkbox"/> YES <input type="checkbox"/> NO				

RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
SBE	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Basis of Recommendation:

Signed: Brandon Nealey
 Date sent to SBD: 8/25/2021

Date returned to SPD:

Miami-Dade County, FL

Contract No.

FleetFocus Licenses, Maintenance, and Support Services
Contract No.

THIS AGREEMENT for the provision of FleetFocus Management System, made and entered into as of this _____ day of _____ by and between AssetWorks LLC, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office at 998 Old Eagle School Road, Suite 1215, Wayne PA 19087 (the "Contractor"), 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 County has obtained FleetFocus Management System inclusive of Licenses, Implementation, Integration, and Maintenance and Support Services under Contract No. RFP775;

WHEREAS, the County wishes to obtain ongoing maintenance and support services, and to establish a framework for obtaining additional licenses, hardware, hosting services and/or professional services for the Fleet Management System:

WHEREAS, the Contractor agrees to provide ongoing maintenance and technical support services, and to establish a framework for delivering additional licenses, hardware, hosting services and/or professional services for the Fleet Management System:

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

ARTICLE 1. DEFINITIONS

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

- 1.1 The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- 1.2 The word "Contract" 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.
- 1.3 The words "Contract Manager" to mean the Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- 1.4 The word "Contractor" to mean AssetWorks LLC and its permitted successors.
- 1.5 The word "Days" to mean calendar days.
- 1.6 The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- 1.7 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 Contractor and its Subcontractors specifically for the County.
- 1.8 The word "Documentation" to mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to licensee by County in connections with the Software.
- 1.9 The words "Licensed Software" to mean the software component(s) provided pursuant to the Contract.
- 1.0 The word "Maintenance" to mean the product updates and product upgrades of Software provided by the Contractor to all customers.

- 1.11 The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- 1.12 The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Contractor.
- 1.13 The words "Service" or "Services" to mean the provision of Fleet Management System services in accordance with the Scope of Services.
- 1.14 The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- 1.15 The word "Work" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. RULES OF INTERPRETATION

- 2.1 References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- 2.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- 2.3 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- 2.4 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.
- 2.5 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.
- 2.6 The titles, headings, captions, and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 3. NATURE OF THE AGREEMENT

- 3.1 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.
- 3.2 The Contractor shall provide the services set forth in the in the Attachments and render full cooperation with the County in all aspects of the Work performed hereunder. County will render full cooperation with Contractor where required in order to allow Contractor to provide the Services.
- 3.3 The Contractor 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 the Project Manager and as described in this Agreement, ordering document, or other documentation agreed by the Parties.
- 3.4 The Contractor acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall implement all changes in providing Services hereunder as a result of a policy change implemented by the County pursuant to a signed amendment or ordering

document. 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 4. CONTRACT TERM

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the 60th month, 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 Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners (the "Board").

ARTICLE 5. MAINTENANCE AND SUPPORT SERVICES

Contractor shall provide the County with maintenance and support services in the manner outlined in Attachment B, "Software Maintenance Terms" for the Licensed Software throughout the term of this Agreement, including any options or extensions exercised by the County.

ARTICLE 6. FUNCTIONALLY EQUIVALENT SOFTWARE

For as long as the County remains current on maintenance and support fees for the Licensed Software, the Contractor is obligated to provide maintenance and support pursuant to the Contract. In the event the Contractor should wish to discontinue maintenance and support of the then current version of the Licensed Software as set-forth in Appendix A, "Scope of Services" or any amendment thereto, and as long as the County is current on Support, Contractor shall be required to provide to the County, free of charge, and with reasonable time to allow for uninterrupted use by the County, a new version of the Software, if one is generally made available to all Contractor customers of the Licensed Software current on Support, which shall replace the previous version and perform the functions described in Appendix A, "Scope of Services" or any amendment thereto, and to support and maintain such new version of the License Software for the balance of the term of this Agreement without additional costs to the County, other than then payment of applicable support fees.

In the case that Contractor is providing support of the then current version of the Licensed Software being used by the County, Contractor shall only provide any new version of the License Software if the County is current on Support and there are no outstanding account receivables and the new License Software is generally made available to all Contractor's customers current on support. Any License Software that includes additional functionality or modules that the County wishes to use may require fees which fees shall be mutually agreed upon in writing by the parties herein.

In the event of a conflict between this Article 7 and any other Articles contained within this Agreement, this Article 7 will prevail.

ARTICLE 7. PURCHASE OF ADDITIONAL PRODUCTS AND SERVICES

Additional products and services related to the Licensed Software for which the Contractor is the proprietary provider or authorized reseller/distributor may be purchased during the term of the Contract. In the event the County wishes to purchase such additional items and/or services, a County representative will contact the Contractor to obtain a price proposal for the additional products and/or services. In the event that the County opts to proceed with the purchase, an amendment or ordering document will be mutually agreed upon by the parties and executed in writing.

This Contract shall include the following attachments:

- Attachment A: Software License Terms
- Attachment B: Software Maintenance Terms
- Attachment C: Professional Services Terms
- Attachment D: Hosting Terms
- Attachment E: Hardware Terms

Miami-Dade County, FL

Contract No.

Should there be any inconsistency between the terms and conditions of this Agreement and any Attachments to this Agreement, the terms and conditions of this Agreement shall take precedence.

ARTICLE 8. AVAILABILITY OF CONTRACT TO OTHER COUNTY DEPARTMENTS

Although this Contract identifies some County Departments, it is hereby agreed and understood that any County department or agency may avail itself of this contract and purchase any and all Products and/or Services specified herein from the Contractor. Under these circumstances, a separate Statement of Work shall be issued in the manner outlined in Article 8 requesting the Products and/or Services, which identifies the requirements of the additional County department(s).

ARTICLE 9. 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: Rey Llerena
Phone: (305) 375-2299
E-mail: Rey.Llerena@miamidade.gov

and

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

AssetWorks LLC.
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Attention: John Crane
Phone: (484) 801-0317
E-mail: john.crane@assetworks.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 10. 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 to be performed under this Contract. The compensation for all Work performed under this Contract, including all costs associated with such Work and Services, shall be negotiated and paid in accordance with subsequent amendment or order form. 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.

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

ARTICLE 11. PRICING

Pricing for Attachment B, "Software Maintenance Terms", shall be in accordance with Attachment B-1, Maintenance and Support Services Price Schedule, for the term of the contract. In addition, Contractor and the County agree to negotiate in good faith to establish pricing at the time that the County identifies the need for additional products and services.

ARTICLE 12. METHOD AND TIMES OF PAYMENT

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor. 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 (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 subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code. 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 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 electronically or in hard copy format by the Contractor to the County as follows:

Miami-Dade County
Internal Service Department
111 NW 1st Street, 10th Floor
Miami, FL 33128
Attention: Accounts Payable

Miami-Dade County, FL

Contract No.

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

ARTICLE 13. INDEMNIFICATION AND INSURANCE

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

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, 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 Contractor as required by Florida Statute 440.
2. Commercial General Liability Insurance, in an amount not less than \$1,000,000 per occurrence \$2,000,000 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 work, in an amount not less than \$300,000 combined single limit.
4. Technology Professional Liability in an amount not less than \$1,000,000 per claim
5. Cyber Liability Insurance to include data breach and third-party liability, in an amount not less than \$1,000,000

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

The company must be rated no less than "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 Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the

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

The Contractor shall assure that the 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 Contractor 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 Contractor shall be responsible for all direct and indirect costs associated with such termination.

County agrees that Contractor' total liability to County for any and all damages whatsoever arising out of or in any way related to this Agreement or any amendment to this Agreement, from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed the amount of fees paid to Contractor in the 12 months preceding the date on which the claim arose.

In no event shall Contractor be liable for (a) special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss or corruption of data, or interruption or loss of use of software or any portion thereof or (b) any damages (regardless of their nature) for any delay or failure by Contractor to perform its obligations under this agreement due to any cause beyond its reasonable control, regardless of the legal theory under which such damages are sought even if Contractor has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

Commented [NB(1)]: Needs to be reviewed by County Attorney

ARTICLE 14. MANNER OF PERFORMANCE

- 14.1 The Contractor 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 Contractor in all aspects of the Work. At the reasonable request of the County, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person performing Work hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- 14.2 The Contractor agrees to defend 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 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.
- 14.3 The Contractor always agrees that it will employ, maintain, and assign to the performance of the Work a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so, directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- 14.4 The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character, and licenses as necessary to perform the Work described herein, in a competent and professional manner.
- 14.5 The Contractor shall always cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 14.6 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 15. PROJECTS AND SERVICES

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on clearly defined ("Project") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Additional Services").

ARTICLE 16. SOFTWARE MODIFICATIONS

16.1 Software Enhancement or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modifications into the Licensed Software specifically to meet the needs of the County. Such features, enhancements or modification shall be known as "Developed Works". Upon the County's request for such enhancements/modifications, the Contractor (if it agrees) shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed and/or Developed Works to be provided. The Contractor shall submit a cost proposal including all costs pertaining to furnishing the County with the enhancement/modifications. As mutually agreed, the Contractor shall provide the requested Developed Works; to allow the County to support the system enhancement/modifications. The County shall not own, sell, rent, lease, loan or distribute such Developed Works. Developed Works shall remain the sole property of the Contractor.

16.2 After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement and those terms included as Attachment to this Agreement. Notwithstanding the foregoing, performance of any such modification shall not compromise the Contractor's warranty obligations. Nothing contained herein shall obligate Contractor to modify the product until a mutually agreed SOW is executed by both parties. Any software enhancement or modification requested by County must be mutually agreed upon.

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

ARTICLE 17. ADDITIONAL STATEMENT OF WORK

Prior to the commencement of additional services, as prescribed under Article 8, for any Project, the County and the Contractor shall mutually agree upon the terms and conditions required to complete a Statement of Work ("Additional SOW") for the specific Project that shall define in detail the Services to be performed. After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project Staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement.

ARTICLE 18. REVIEWING DELIVERABLES

The Contractor agrees to submit all Deliverables required to be submitted for review and approval by the County in accordance with specific requirements in the Statement of Work, and as specified herein. "Deliverables" do not include software corrections and updates provided pursuant to Attachment B, Software Maintenance Terms. The Contractor understands that the County shall have final approval on all Deliverables.

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

- i. a written notification of the County's approval,
- ii. a written notification that each Deliverable is approved subject to the Contractor providing correction of a minor deficiency, or,

- iii. in the case of a Deliverable that does not meet the requirements of the Agreement, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiently advise the Contractor of the basis on which the deliverable was determine to be unacceptable.

The Contractor understands that failure by the County to provide a notice of approval or disapproval within thirty (30) days of receipt of the Deliverable will constitute approval.

The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the reasonable time the County specifies for such correction in the County's notice concerning a partial approval (including approvals subject to correction of minor deficiencies).

ARTICLE 19. EMPLOYEES OF THE CONTRACTOR

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

ARTICLE 20. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 21. SOFTWARE WARRANTIES

- 21.1 Ownership. The Contractor represents that it is the owner of the entire right, title and interest in the Software, or has the right to license the Software, and that it has the right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.
- 21.2 Limited Warranty. Contractor represents and warrants to the County that the Software, when properly installed by the County will perform substantially as described in the Contractor's then current Documentation for such Software, and will meet the requirements and uses as represented to County by Contractor, for a period of ninety (90) business days from the date of Final Acceptance.
- 21.3 Limitations. Notwithstanding the warranty provisions set forth in Section 21.2 above, all of Contractor's obligations with respect to such warranties shall be contingent on County's use of the Software in accordance with this Agreement and in accordance with Contractor's instructions as provided to the County in the Documentation, as such instructions may be amended, supplemented, or modified by the Contractor from time to time. The Contractor shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, or extreme power surge.
- 21.4 County Remedies. If Software fails to meet warranties requirements and Contractor fails to remedy the non-compliance or replace the Software within sixty (60) days of written notice specifying the non-compliance or failure or longer as determined by County, County, at its sole discretion may require Contractor to refund the amount paid by the County for the Software concerned upon return of such Software or the amount paid for the entire product, depending on the failure, to Contractor, or terminate the "Statement of Work" and refund that portion of any fees received that correspond to such failure to perform. Contractor shall have no liability under this provision after expiration of the Warranty Period. If the County elects to have Contractor refund all or part of the fees for Software because of a breach of warranty in this Section 22, County's damages are limited to that refund and County shall have no further remedy or claim against Contractor. County May, at its election, not to seek a refund and shall have all rights

and remedies available in this Agreement and at law. For clarity, this provision does not apply to professional services, which are warranted under Article 22.

ARTICLE 22. PROFESSIONAL SERVICES WARRANTIES

The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorization, integrity, character and licenses as necessary to perform Services described herein, in a competent and professional manner.

ARTICLE 23. HARDWARE WARRANTIES

- 23.1 The Contractor warrants, for a period of one (1) year from the County's Final System Acceptance, that any Hardware and related Software provided by the Contractor shall:
- i. Be free from defects in material and workmanship under normal use and remain in good working order, wear and tear excepted;
 - ii. Function properly and in conformity with the warranties in this Agreement;
 - iii. Meet the performance standards set forth in any subsequent Statement of Work or Order Document and the Original Equipment Manufacturer's (OEM) published specifications.
- 23.2 During the Warranty Period, Contractor agrees to use all reasonable efforts and resources to provide to the County all corrections and/or modifications necessary to correct problems with the Hardware provided by the Contractor that are reported to Contractor, at no additional cost.
- 23.3 During the Warranty Period, Contractor shall enforce the manufacturer's warranty and maintenance obligations relating to the Hardware and related Software it provides.
- 23.5 In the event the Contractor's Hardware does not satisfy the conditions of performance, the Contractor's obligation is to provide repair at the Contractor's cost and expense, or to provide different equipment, software and services required to attain the performance requirements. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's obligations hereof.

ARTICLE 24. THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Contractor hereby assigns to the County, and the County shall have the benefit of, any and all subcontractor's and suppliers' warranties and representations with respect to the Licensed Software provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the County; (ii) agree that such warranties and representations are enforceable by the County in its own name; and (iii) furnish to the County, the warranties and obligations as set forth in Articles 21 "Software Warranties", Article 22 "Professional Services Warranties, and Article 23 "Hardware Warranties".

ARTICLE 25. DISPUTE RESOLUTION PROCEDURE

- 25.1 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.**
- 25.2 This Article will survive the termination or expiration of this Agreement.

ARTICLE 26. MUTUAL OBLIGATIONS

- 26.1 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.
- 26.2 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.
- 26.3 In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for such defense or settlement costs from the Contractor.

ARTICLE 27. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 28. 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 Contractor's books, documents, papers and records and of its Subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five business days of the Commission Auditor's request, provided, however, if it is not reasonably possible to comply with the Commission Auditor's request within five (5) business days, then access to the requested information shall be provided within the limited reasonable time necessary to retrieve the information. 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.

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ARTICLE 29. SUBSTITUTION OF PERSONNEL

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

ARTICLE 30. 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 31. SUBCONTRACTUAL RELATIONS

31.1 If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts, omissions, 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.

31.2 The Contractor, before making any subcontract for any portion of the Work, will state in writing to the County the name of the

proposed Subcontractor, the portion of the Work which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

- 31.3 Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Work to be performed. Such Work performed by such Subcontractor will strictly comply with the requirements of this Contract.
- 31.4 The County shall have the right to withdraw its consent to a subcontract if the County reasonably believes that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder.

ARTICLE 32. 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 33. 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 34. TERMINATION AND SUSPENSION OF WORK

- 34.1 This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Contractor commits an Event of Default (as defined below in Article 32) and fails to cure said Event of Default (as delineated below in Article 25), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- 34.2 This Agreement may also be terminated for convenience by the County upon thirty (30) days' notice to Contractor.
- 34.3 The foregoing notwithstanding, if the Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from County contracting in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code.
- 34.4 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. take no action which will increase the amounts payable by the County under this Agreement; and
 - vi. if terminated for cause, reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Attachment B-1.

34.5 In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Attachment B-1 or any subsequent Amendments or Order Documents herein for the:

- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- ii. if terminated for convenience, any prepaid annual maintenance or licensing fees.

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

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

ARTICLE 35. EVENT OF DEFAULT

35.1 An Event of Default is a material breach of this Agreement by the Contractor, and includes but is not limited to the following:

- i. the Contractor has not delivered Deliverables and/or Services on a timely basis as detailed in any subsequent SOW, any delay on part of the County shall be communicated to the Contractor and reflected in a revised SOW and shall not constitute a material breach of this Agreement
- ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
- iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
- vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
- vii. the Contractor has failed in the representation of any warranties stated herein; or
- viii. the Contractor fails to comply with Article 39.

35.2 When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Work 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 and/or material breach of this Agreement; and
- ii. resort to any remedy for breach provided herein or at law.

ARTICLE 36. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall notify the Contractor (the "Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured, or this Agreement with the County may be terminated. The County and Contractor shall immediately agree on an appropriate timeframe for such rectifying of the default. 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 Work upon the Effective Termination Date.

ARTICLE 37. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, whether or not the County elects to terminate this Agreement as a result thereof, the Contractor shall be liable for all direct damages resulting from the default, irrespective of whether the County elects to terminate the Agreement.

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 38. PATENT AND COPYRIGHT INDEMNIFICATION

38.1 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.

38.2 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.

38.3 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 defend the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

38.4 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 Contractor'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).

38.5 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 39. CONFIDENTIALITY

39.1 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 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 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 and indemnify the County, and their officers and employees from the breach of any federal, state, or local law in regard to the privacy of individuals.

- 39.2 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.
- 39.3 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 40. 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 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 (the "Computer Software"). All third-party license agreements must also be honored by the Contractor and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractor's employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers, 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 41. PROPRIETARY RIGHTS

41.1 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.

41.2 The Contractor and the County shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property. The Services performed, code developed and any Intellectual Property produced pursuant to this Agreement ("Developments") are not "works for hire," or any similar concept throughout the world, and the Contractor is the sole owner of all right, title and interest in such Developments. If for any reason any Developments may be considered "works made for hire" and/

or there are any rights in the Developments that accrue to the County, then the County hereby irrevocably assigns and agrees to assign any and all of rights, title and interest thereto, whether now known or hereafter defined or discovered, to the Contractor and the County agrees to take such further action, including executing such instruments and documents as the Contractor may reasonably request, to evidence such assignment. As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, copyright, techniques, know-how, ideas, concepts, algorithms, and other intellectual property incorporated into any Statement of Work or Deliverable whether or not first created, discovered, or developed by the Contractor in providing the Services. All Developed Works shall become the property of the County.

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38.3 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.

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38.4 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.

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ARTICLE 42. VENDOR REGISTRATION/CONFLICT OF INTEREST

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42.1 Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Contractor's "County Vendor Number." To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
▪ Payments to individual/Contractor for goods and services provided to Miami-Dade County
▪ Tax reporting purposes
▪ Provision of unique identifier in the vendor database used for searching and sorting departmental records

The Contractor confirms its knowledge of and commitment to comply with the following:

1. Miami-Dade County Ownership Disclosure Affidavit (Section 2-8.1 of the Code of Miami-Dade County)
5. Miami-Dade County Debarment Disclosure Affidavit (Section 10.38 of the Code of Miami-Dade County)
2. Miami-Dade County Employment Disclosure Affidavit (Section 2.8.1(d)(2) of the Code of Miami-Dade County)
6. Miami-Dade County Vendor Obligation to County Affidavit (Section 2-8.1 of the Code of Miami-Dade County)
3. Miami-Dade County Employment Drug-free Workplace Certification (Section 2-8.1.2(b) of the Code of Miami-Dade County)
7. Miami-Dade County Code of Business Ethics Affidavit (Article I, Section 2-8.1(i) of the Code of Miami-Dade County)
4. Miami-Dade County Disability and Nondiscrimination Affidavit

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| <p>8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the Code of Miami-Dade County)</p> <p>9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the Code of Miami-Dade County)</p> <p>10. Miami-Dade County Domestic Leave and Reporting Affidavit (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p> <p>11. Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit
(Section 448.095, of the Florida State Statutes)</p> <p>12. Miami-Dade County Pay Parity Affidavit
(Resolution No. R-1072-17)</p> | <p>13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit
(Resolution No. R-919-18)</p> <p>14. Office of the Inspector General
(Section 2-1076 of the Code of Miami-Dade County)</p> <p>15. Small Business Enterprises
<i>The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1, 2-8.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.</i></p> <p>16. Antitrust Laws
<i>By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.</i></p> |
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42.2 Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the 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. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1(y) of the Code, the Miami-Dade County Commission on Ethics and Public Trust shall be empowered to review, interpret, render advisory opinions and letters of instruction, and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 43. 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 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, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter of one percent (0.25%) of the total Contract amount which cost shall be included in the total Contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all 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 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 44. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

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

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".

- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- o) Any other laws prohibiting wage rate discrimination based on sex.
- p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

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

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

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

ARTICLE 45. NONDISCRIMINATION

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

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

ARTICLE 46. 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, 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 Contractor or to the best of the Contractor's knowledge any Subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
 - d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
 - e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information and comply with the instructions Contractor receives from the Project Manager regarding remedying the situation.

ARTICLE 47. 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 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 Contractor and its employees, agents, Subcontractors, and suppliers will not represent, directly or indirectly, that any Work, Deliverables or Services provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 48. BANKRUPTCY

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

ARTICLE 49. 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 50. COUNTY USER ACCESS PROGRAM (UAP)

- a) **User Access Fee**

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

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

b) 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 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 51. 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 52. LIENS

The Contractor is prohibited from placing a lien on County property. This prohibition shall apply to all Subcontractors.

ARTICLE 53. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, 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 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 Contractor is free to fill its vacancies from other sources. Contractor 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 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 First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 54. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the Contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

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

ARTICLE 55. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 56. FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"), however, nothing in this section shall relieve the County of the obligation to make payments for any products or services provided by the Contractor. Any delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

ARTICLE 57. SURVIVAL

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

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

Contractor

Miami-Dade County

Miami-Dade County, FL

Contract No.

By: _____
 Name: _____
 Title: _____
 Date: _____
 Attest: _____
 Corporate Secretary/Notary Public

By: _____
 Name: Daniella Levine Cava
 Title: Mayor
 Date: _____
 Attest: _____
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

 Assistant County Attorney

ATTACHMENT A – SOFTWARE LICENSE TERMS

1. SOFTWARE LICENSE

A. Subject to the terms and conditions set forth in this Agreement, AssetWorks grants to Customer a limited, non-exclusive, perpetual (subject to the Termination section of this Attachment below) non-transferable, non-sublicensable license to the AssetWorks software (Software) for the number of units specified in the purchase order (Order Form). The AssetWorks Software is licensed under different license categories. The license to the software granted to Customer shall be specified on the Order Form and is described below. Except as provided above, use of Software in excess of limits defined in the Order Form requires additional licensing fees. Customer's license is to use the Software in its own business; Customer has no right to use the Software in processing work for third parties.

i. "Concurrent License" – means a license for an authorized user of the Software/Services, provided that the number of simultaneous users may not exceed the number of licenses purchased. Each simultaneous login to the Software (through active browser sessions) shall be deemed to constitute one Concurrent License.

A.i.1. "Active Equipment Unit License" – means a license per asset that Customer has purchased. Customer must purchase a license for each Active Equipment Unit to be covered by the Software. Active Equipment Units are vehicles or assets that are active in the customer's fleet in that work is performed or activity about the asset is reported on a recurring basis. Sold, retired or permanently inactive units do not count as Active Equipment Units and the historical information of these assets can reside in the database.

A.i.2. "Enterprise License" – The Enterprise License is a license for the Software that allows for an unlimited number of users and tracks an unlimited amount of assets. Pricing is based on the population of the city, town, region, fleet, college, university, department, etc. (Population Base) the Customer utilizes the Enterprise License to cover. Customer must promptly purchase an Enterprise License reconciliation if Customer's Population Base increases beyond the Customer's licensed limits for any reason, including, but not limited to a material increase in Population Base, use of the Software to provide Services to an additional population or merger of the Customer with any other entity that increases the population served by the Software.

B. For Customer hosted instances of the Software, Customer shall have the right to use only one copy or image of the Software for production purposes and shall not copy or use the Software for any other purpose except (i) for archival purposes, (ii) in connection with a disaster recovery program, and (iii) for the purpose of testing the operation of the Software, provided such testing copy shall not be used in a live production environment. AssetWorks Hosted Software is subject to the Hosting Terms Attachment.

C. Software may be licensed on a per-seat basis, a number of Active Equipment Unit basis, or other basis as described on the Order Form ("License Restriction"). Customer may increase the License Restriction at any time by executing a subsequent Order Form

and paying in full the applicable fees. "Active Equipment Unit" shall mean any in service unit to which work orders, fuel tickets, or usage tickets are posted, but shall not include retired equipment.

- D. If any third party Software is provided to Customer pursuant to this Agreement, such license shall be in accordance with terms set forth in the Order Form.
- E. "Source Code" shall mean Software in human-readable form, including all appropriate programmer's comments, data files and structures, header and include files, macros, make files, object libraries, programming tools not commercially available, technical specifications, flowcharts and logic diagrams, schematics, annotations and documentation reasonably required or necessary to enable a competent independent third party programmer to create, operate, maintain, modify and improve such Software without the help of any other person, and with data files containing Source Code in standard ASCII format readable by a text editor.
- F. Except as expressly authorized under this Agreement, Customer shall not (i) sell, rent, lease, timeshare, encumber, license, sublicense, transfer or assign the Software or Documentation; (ii) attempt to decompile, disassemble or reverse engineer the Software in whole or in part, or otherwise attempt to derive the Source Code of the Software.

Except for the license specifically granted by this Agreement, AssetWorks retains all right, title and interest in the Software (including object-code and source code formats), the documentation and all related materials and all intellectual property rights worldwide to the Software and the Documentation. Customer received no other license, express or implied, than what is expressly set forth in this Section.

2. NON-DISCLOSURE

- A. Subject to the other paragraphs in this Section, Customer agrees that the Software shall be held in confidence by Customer and shall not be disclosed to others without the prior written consent of AssetWorks, which may be withheld by AssetWorks in its sole discretion. This obligation to hold confidential does not apply to any portion of the Software (1) developed by Customer and in Customer's possession prior to the receipt of same from AssetWorks; (2) which at the time of disclosure is part of the public domain through no act or failure to act by Customer; or (3) which is lawfully disclosed to Customer without restriction on further disclosure by another party who did not acquire same from AssetWorks.
- B. AssetWorks provides documentation for the Software electronically. The Customer may copy, in whole or in part, any such documentation relative to the Software for Customer's internal use consistent with this Agreement.
- C. Customer's records with regard to use of the Software shall be made available to AssetWorks at all reasonable times at AssetWorks' request to audit Customer's compliance with this Agreement, and Customer shall certify to the truth and accuracy of such records.

3. LIMITED WARRANTIES

- A. **Software Warranty.** AssetWorks represents that it has the right to license the Software to Customer as provided in the Software License Section. AssetWorks further represents that the Software will conform to the description contained in the documentation provided or published by AssetWorks ("Documentation") In the event the Software fails to conform to the description contained in the Documentation, AssetWorks' sole obligation shall be to correct the errors as detailed in this Section. This limited warranty is in lieu of all liabilities or obligations of AssetWorks for damages arising out of or in connection with the delivery, use or performance of the Software. This warranty extends for a period of 90 days following the date the Software is made available to Customer, but in no event later than 1 year from the date of execution of this Agreement.
- B. **Intellectual Property Indemnity.** AssetWorks will defend, at its own expense, any action brought against Customer to the extent that it is based on a claim that the Software supplied by AssetWorks infringes a Worldwide patent or copyright, and AssetWorks will pay those costs and damages finally awarded against Customer in any such action that are attributable to any such claim; provided, such defense and payments are conditioned on the following: (1) that AssetWorks shall be promptly notified in writing by Customer following its receipt of any such claim; (2) that AssetWorks shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in AssetWorks' opinion is likely to become, the subject of a claim of infringement of a Worldwide patent or copyright, then Customer shall permit AssetWorks, at its option and expense, either to (A) procure for Customer a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for Customer a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year over the lifetime of the Software, which the parties agree shall be 5 years. AssetWorks shall have no liability to Customer under any provision of this clause with respect to any claim of patent or copyright infringement that is based on Customer's unauthorized use or combination of the Software with Software or data not supplied by AssetWorks as part of the Software. AssetWorks' indemnification obligation under this section shall not exceed one million dollars in the aggregate.
- C. Unless prohibited by applicable law, Customer agrees to indemnify and defend AssetWorks against any claims made by any third party against AssetWorks arising out of Customer's use of the Software unless such claims are due to the negligence or willful misconduct of AssetWorks.
- D. During the warranty period, in the event that the Customer encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, AssetWorks sole responsibility under this Limited Warranty is as follows:
 - i. In the event that, in the mutual and reasonable opinion of AssetWorks and the Customer, there exists an error or

nonconformance to the Documentation, AssetWorks will take such steps as are reasonably required to correct the error with due dispatch.

- ii. In the event that, in the mutual and reasonable opinion of AssetWorks and the Customer, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the error and distribute the correction to the Customer in accordance with AssetWorks' normal Software revision schedule.

THIS LIMITED WARRANTY IS PROVIDED IN LIEU OF ALL OTHER RIGHTS, CONDITIONS AND WARRANTIES. ASSETWORKS MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ASSETWORKS DOES NOT WARRANT THAT ANY PRODUCTS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ITS PRODUCTS CAN BE CORRECTED. IN NO EVENT SHALL ASSETWORKS BE LIABLE UNDER THIS WARRANTY FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST DATA), HOWEVER CAUSED WHETHER OR NOT ASSETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. TERMINATION

- A. The license conveyed pursuant to this Attachment may be terminated by AssetWorks in the event of breach or default by Customer under this Agreement provided AssetWorks notifies Customer in writing of the breach or default and Customer does not correct same within 30 days of AssetWorks' written notice.
- B. In addition, Customer shall have the right to terminate the Software License at any time; provided such termination shall not relieve Customer of its obligations to pay any remaining unpaid balance.
- C. All Software and Documentation shall be and will remain the property of AssetWorks. Upon termination of this Agreement, whatever the reason, such Software and Documentation and any copies thereof made by Customer pursuant to the Non-Disclosure Section of this Attachment above shall be promptly returned to AssetWorks.

ATTACHMENT B – SOFTWARE MAINTENANCE TERMS

1. **Term.** Maintenance shall commence immediately upon the effective date and shall have a term of 12 months. The term shall renew each year thereafter for an additional 12 month period unless terminated as set forth below.
2. **Corrections of Deviations.** In the event that the County encounters an error and/or malfunction ("Deviation") in the Software, it shall communicate the circumstances and any supporting information to the Contractor. Upon receipt, Contractor will respond as follows:
 - a. In the event that, in mutual and reasonable opinion of Contractor and the County, there exist a Deviation that does not constitute a serious impediment to the normal intended use of the Software, Contractor will correct the Deviation and distribute the connection to the County in accordance with the Contractor normal Software revision schedule.
 - b. In the event that, in the mutual and reasonable opinion of Contractor and the County there exists a Deviation That does constitute a serious impediment to the normal, intended use of the Software, Contractor will take such steps as are reasonably required to correct the Deviation.
3. **Software Revisions and New Versions**
 - a. The Software may be revised by Contractor as a result of the correction of Deviation and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). Revisions shall be of two kinds:
 - i. Revisions that the County is obligated to implement ("Mandatory Revisions");
 - ii. Revisions that may be implemented by the County at its option ("Optional Revisions").

No charge shall be made to the County for either Mandatory Revisions or Optional Revisions while under a current Maintenance Agreement.

- b. New products ("New Products") may be added to the Software by Contractor from time to time. Compared to a Revision, New Products substantially improve the performance of the Software and/or substantially increase its functionality and capability. Contractor, in its sole discretion, shall decide which upgrades and improvements will be issued as Revisions without charge and which shall be issued as New Products for which there may be a charge.

4. **Telephone Hotline Assistance.** Contractor, at its expense shall make available technically qualified personnel to respond to all reasonable telephone requests, Monday through Friday, excluding state holidays, during normal business hours, that may be made by the County relating to the application and operation of the Software. At other times such personnel are available by pager for emergencies.
5. **Technical Literature.** Contractor shall make available to the County all technical literature in electronic format that is considered by Contractor to be relevant to the Software and its use within the scope of the County's operations.
6. **Transmission.** All Revisions and New Products will be made available for download by the County via access to the Contractor's website or other suitable media, at the option of Contractor. The County shall be solely responsible for executing the appropriate instructions in order to transfer the Revisions or New Products onto its system.
7. **Remote Diagnostic Access.** The County shall provide appropriate remote access capabilities with which Contractor may, with the permission of the County, remotely access the Software for the purpose of remote diagnostics and support.
8. **Proper Use**
 - a. County shall not modify the Software or Source Code defined in the Software License Terms specifically authorized by Contractor in writing.
 - b. The County agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused or modified without express written permission of the Contractor.
 - c. In the event the County or its agents misuses or modifies the Software or data files, including, but not limited to, inserting, updating, deleting or otherwise modifying data through a means other than the Software, although Contractor is not obligated to correct such misuse, Contractor shall be entitled to attempt to correct the situation, if possible, at County's expense.
 - d. In the event that diagnostic assistance is provided by Contractor, which, in the reasonable opinion of the Contractor and the County, relates to problems not caused by a deviation in the Software, such assistance shall be at the County's expense.
9. **Software Maintenance Fee – Paid Up License.** In consideration of the Maintenance services to be provided by Contractor for the initial twelve month period hereunder, County shall pay to Contractor the amount set for in Appendix B. For each twelve month period thereafter, County will pay to Contractor fees in accordance with this Agreement.
10. **Additional Software Maintenance Fee – Paid Up License.** In the event the County acquires additional Software licenses from the Contractor, the maintenance shall automatically be extended to cover the Additional Software, and the County shall pay an additional annual fee in an amount equal to twenty percent (20%) of the then current fee for the Additional Software at the time of acquisition.

In the event that the County purchases any custom interfaces, APIs or other software (Developed Software), Contractor may also charge maintenance on the Developed Software in an amount equal to twenty percent (20%) of the cost of the developed Software.
11. **Other Fees and Expenses.** If onsite maintenance is required, County will pay reasonable travel and living expenses of Contractors' employees or agents, which shall be billed and paid as the expenses are incurred in accordance with Article 11 of the Agreement.

ATTACHMENT B-1 – MAINTENANCE AND SUPPORT SERVICES PRICE SCHEDULE

Commented [LR6]: Reviewing updates internally.

FleetFocus M5 Maintenance and Support Renewal

Annual Software Maintenance and Support for period 3/1/2021-2/28/2022, Year 1 of 5

FleetFocus M5 license for up to 9,600 vehicles and 28,800 components

Fuel-Only licenses for up to 6,813 vehicles and 20,439 components

Including Dashboard, Customer Portal, Performance Measures & Monitors, Motor Pool, Reservations, Screen Designer, Shop Portal, Ad Hoc Query, and Maxqueue modules; MobileFocus for 5 handhelds devices; Crystal Reports with 10 Concurrent Access licenses; and Crystal Developer

	\$84,359.08
Escrow	\$1,250.00
2021-2022 Subtotal	\$85,609.08

Annual Software Maintenance and Support for period 3/1/2022-2/28/2023, Year 2 of 5

FleetFocus M5 license for up to 9,600 vehicles and 28,800 components

Fuel-Only licenses for up to 6,813 vehicles and 20,439 components

Including Dashboard, Customer Portal, Performance Measures & Monitors, Motor Pool, Reservations, Screen Designer, Shop Portal, Ad Hoc Query, and Maxqueue modules; MobileFocus for 5 handhelds devices; Crystal Reports with 10 Concurrent Access licenses; and Crystal Developer

	\$88,577.03
Escrow	\$1,250.00
2022-2023 Subtotal	\$89,827.03

Annual Software Maintenance and Support for period 3/1/2023-2/28/2024, Year 3 of 5

FleetFocus M5 license for up to 9,600 vehicles and 28,800 components

Fuel-Only licenses for up to 6,813 vehicles and 20,439 components

Including Dashboard, Customer Portal, Performance Measures & Monitors, Motor Pool, Reservations, Screen Designer, Shop Portal, Ad Hoc Query, and Maxqueue modules; MobileFocus for 5 handhelds devices; Crystal Reports with 10 Concurrent Access licenses; and Crystal Developer

	\$93,005.88
Escrow	\$1,250.00
2023-2024 Subtotal	\$94,255.88

Miami-Dade County, FL

Contract No.

Annual Software Maintenance and Support for period 3/1/2024-2/28/2025, Year 4 of 5

FleetFocus M5 license for up to 9,600 vehicles and 28,800 components

Fuel-Only licenses for up to 6,813 vehicles and 20,439 components

Including Dashboard, Customer Portal, Performance Measures & Monitors, Motor Pool, Reservations, Screen Designer, Shop Portal, Ad Hoc Query, and Maxqueue modules; MobileFocus for 5 handhelds devices; Crystal Reports with 10 Concurrent Access licenses; and Crystal Developer

Same configuration as above

\$97,656.18

Escrow

\$1,250.00

2024-2025 Subtotal \$98,906.18

Annual Software Maintenance and Support for period 3/1/2025-2/28/2026, Year 5 of 5

FleetFocus M5 license for up to 9,600 vehicles and 28,800 components

Fuel-Only licenses for up to 6,813 vehicles and 20,439 components

Including Dashboard, Customer Portal, Performance Measures & Monitors, Motor Pool, Reservations, Screen Designer, Shop Portal, Ad Hoc Query, and Maxqueue modules; MobileFocus for 5 handhelds devices; Crystal Reports with 10 Concurrent Access licenses; and Crystal Developer

Same configuration as above

\$102,538.99

Escrow

\$1,250.00

2025-2026 Subtotal \$103,788.99

5 Year Budgetary Total ~~\$472,387.16~~

Commented [LR7]: May needed to be updated to include fees pursuant to County's provisions.

ATTACHMENT C – PROFESSIONAL SERVICES TERMS

1. Services / Statement of Work. AssetWorks will perform the Professional Services ("Services") described in the Statement of Work and/or Order Form ("Statement of Work"). The terms of this Attachment shall control any additional or future Statements of Work that may be executed by the parties during the Term of the Agreement. No Statement of Work shall be of any force and effect unless and until executed by both AssetWorks and Customer.

Commented [NB(8)]: Is something missing from this section?

2. Price and Payment Term

- a. Each Statement of Work will either be on a time and material basis or a fixed price basis, specified in the Statement of Work. The Statement of Work may or may not include a definitive list of "Deliverables" that must be completed by AssetWorks. In some instances, the Statement of Work will include a date by which "Deliverables" must be completed.
- b. In the event that Services result in greater AssetWorks duties than contemplated by the Statement of Work, Customer will work closely and in good faith with AssetWorks to modify the Statement of Work to ensure that the Customer's requirements are addressed and AssetWorks' fees shall be adjusted to reflect increased Customer requirements.
- c. Unless specifically addressed in the Statement of Work, all travel and expenses incurred will be extra and billed at the time of incurrence, in accordance with Article 11 of the Agreement.
- d. The preferred means of payment is by electronic funds transfer (EFT). EFT payments can be accomplished as either a Funds Transfer (Fed Wire) or Direct Deposit (ACH).
- e. Custom modules, interfaces and other Software can be placed under the AssetWorks Software Maintenance program.
- f. Bill to Address. The invoice will be mailed to the Customer address on the Order Form unless otherwise indicated in the Statement of Work.

Commented [LR9R8]: Added the missing language.

3. Resources to be Provided by Customer

- a. Customer shall provide, maintain and make available to AssetWorks, at Customer's expense and in a timely manner, the resources described in this Section, the Statement of Work, and such other additional resources as AssetWorks may from time to time reasonably request in connection with AssetWorks performance of the Services. Delays in the provision of these resources may result in delays in the performance of the Services, or an increase in the Price.
 - b. Customer will designate qualified Customer personnel or representatives to consult with AssetWorks on a regular basis in connection with the Services. Customer will furnish such documentation and other information as is reasonably necessary to perform the Services.
 - c. Customer shall furnish access to Customer's premises, and appropriate workspace for any AssetWorks personnel working at Customer's premises, as necessary for performance of those portions of the Services to be performed at Customer's premises.
 - d. Customer shall meet all assumptions noted on the Statement of Work.
4. Subcontractors. AssetWorks may engage subcontractors to assist in performing Services without the prior written consent of Customer; provided, AssetWorks shall supervise such sub-contractors and the Services performed by them to the same extent as if AssetWorks performed the work.
5. Termination for Default. Either party may terminate any Statement of Work if (i) the other party fails to perform a material obligation of the Statement of Work and such failure remains uncured for a period of 30 days after receipt of notice from the non-breaching party specifying such failure; or (ii) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors. In addition, AssetWorks may terminate any Statement of Work effective immediately upon written notice to Customer if Customer fails to make any payment in full as and when due hereunder. Termination of a Statement of Work shall not terminate this Agreement.
- Upon termination for whatever reason and regardless of the nature of the default (if any), Customer agrees to pay AssetWorks the full value for all goods and/or Services provided to Customer up to and including the date of termination. For avoidance of doubt, where AssetWorks has not yet completed a milestone documented on the Statement of Work and this agreement is terminated for whatever reason and regardless of the nature of the default (if any), Customer shall pay to AssetWorks for the work completed up to and including at the time of termination.
6. Termination for Convenience. Notwithstanding any other provision in this Agreement, either party may terminate a Statement of Work by providing a 90-day notice of intent to terminate the Statement of Work.
7. Effect of Termination. The Terms of this Agreement shall survive for any Statement of Work which is still pending at the time of termination until the conclusion of the Statement of Work.
8. Professional Services Limited Warranty
- a. AssetWorks warrants that the Deliverables provided under an Order Form or a Statement of Work authorized under this Attachment shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar Services. In the event of any breach of the foregoing warranty, provided Customer has delivered to AssetWorks timely notice of such breach as hereinafter required, AssetWorks shall, at its own expense, in its discretion either (1) correct the non-conforming Deliverables to conform to this standard; or (2) refund to Customer that portion of the Price received by AssetWorks attributable to the non-conforming Deliverables. No warranty claim shall be effective unless Customer has delivered to AssetWorks written notice specifying in detail the non-conformities within 90 days after tender of the non-conforming Deliverables. The remedy set forth in this Section (a) is the sole and exclusive remedy for breach of the foregoing warranty.
 - b. **ASSETWORKS SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, WARRANTIES OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE, ANY WARRANTY OF ERROR-FREE PERFORMANCE, OR ANY WARRANTY OF THIRD PARTY PRODUCTS, OR FUNCTIONALITY OF THE CUSTOMER'S HARDWARE, SOFTWARE, FIRMWARE, OR COMPUTER SYSTEMS.**
 - c. Customer represents and warrants to AssetWorks that Customer has the right to use and furnish to AssetWorks for AssetWorks use in connection with this Agreement any information, specifications, data or Intellectual Property that Customer has provided or will provide to AssetWorks in order for AssetWorks to perform the Services and to create the Deliverables identified in the Statement of Work.

9. Relationship of Parties. AssetWorks is an independent contractor in all respects with regard to any Professional Services. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, agency, or other relationship other than that of contractor and Customer.

ATTACHMENT D – HOSTING TERMS

A. AGREEMENT OVERVIEW. AssetWorks provides hosting Services (“Data Center”) to support customers that wish to outsource the operation and maintenance of the AssetWorks Software licensed by Customer under separate licensing agreements.

This Agreement, the Service Level Agreement and the Hosting Scope of Service describe the hosting Services to be provided by AssetWorks (“Hosting Services”), the respective responsibilities of the parties.

B. SERVICES. AssetWorks will perform the Hosting Services as described in the Scope of Services, set forth in below.

The scope of Services specifically excludes operation and maintenance of the following:

- Customer Hardware, including Customer’s servers, printers, network Hardware (including routers and switches) and other Customer site computing equipment;
- Customer application Software other than noted in the Scope of Services; and
- Customer Local Area Networks (“LAN”)
- Customer network infrastructure for connecting to the Internet and to the Data Center

The Services shall be provided subject to the Terms and Conditions, which follow.

C. **FEES AND PAYMENT; COMMENCEMENT.** Customer shall pay AssetWorks the applicable fees as set forth in the Order Form.

For new Customers, billing for hosting shall commence upon the Effective Date. For existing Customers who are migrating to the hosted environment, billing shall commence when Customer is notified that the hosted production or test environment has been established.

D. **CUSTOMER RESPONSIBILITIES.** The Customer is responsible for:

- Assigning a primary and alternate Customer designated key personnel to coordinate all communications and activities related to AssetWorks Services.
- Providing user identification data and determining the appropriate security profile for each user. Customer will control security at the Application level.
- All printing. No print job will print at the Data Center and all physical printing requirements will be handled by the Customer.
- The purchase and installation of printers at Customer's sites for the Application being utilized as defined in the Scope of Services.
- Installation, operation and maintenance of all workstation Software (and Customer's LAN, existing data communications configuration, Hardware, or Software required at the Customer's site except as otherwise stipulated in the Scope of Services. AssetWorks network and network responsibility extends from the AssetWorks routers at AssetWorks' sites to all connected equipment at AssetWorks' sites.
- Testing updates and fixes applied by AssetWorks to Applications used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the Production environment within a mutually agreed upon time frame.
- Testing upgrades. Upgrades will be moved to production by the AssetWorks at the end of the Customer testing period unless specific problems are documented in writing to AssetWorks.
- Diligent analysis of suspected problems to determine their specific nature and possible causes before calling the AssetWorks for assistance. Notwithstanding this diligence requirement, Customer is responsible for informing AssetWorks of any problems encountered in a timely manner.

E. **OWNERSHIP OF DATA.** Customer shall not obtain any ownership rights, title or interest in the Software, Hardware or systems developed or employed by AssetWorks in providing Services under the Agreement. AssetWorks shall not obtain any ownership rights, title or interest to Customer's data files. Upon expiration or termination of the Agreement for any reason, AssetWorks agrees to provide Customer with a copy of Customer's data files, as they exist at the date of expiration or termination. Data will be delivered in one of the following formats ASCII comma, separated value (CSV Format) with binary images TIFF, JPG, PDF. Customer requests for data to be provided in any other format are subject to approval by AssetWorks and may require an additional fee.

F. **HOSTING SCOPE OF SERVICES**

All of the Services, functions, processes, and activities described below will be collectively described as the "Hosted Services" for purposes of this Agreement.

Application

Application refers to the Customer's licensed AssetWorks Software, and third party Software hosted by AssetWorks.

Support Software

Support Software includes the operating system, utilities, database Software, and all necessary licenses required to operate the Application.

Hardware

Server infrastructure using redundant web servers and Oracle RAC database servers is deployed within the primary Data Center.

If required by Customer, Customer shall provide the telecommunications equipment (including the routers to be installed at the Data Center), communication line, and Services for connection from Customer's site to the Data Center.

Database Instances

AssetWorks will maintain a single Production Database instance. This Production Database will provide the daily, real-time transaction data to the Application users.

In addition to the Production Database, AssetWorks will maintain one additional, non-production Database (Test). Upon request by Customer, AssetWorks will populate these additional Databases with Customer's Production data up to 4 times in any 12 month period at no additional cost.

Custom Reports

Custom Reports may be ordered pursuant to a Statement of Work for an additional charge.

Backups

Database and file system backups are performed daily. Backup data is stored and retained at a secure offsite facility for 14 days.

Hours of System Operations

The Application will be accessible and available to the Customer and capable of any and all normal operating functions 24 hours a day, 7 days a week except for periods of Scheduled Maintenance and previously approved outages. AssetWorks will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the AssetWorks external network interface, nor will these hours of unavailability be counted as unavailable.

Maintenance

AssetWorks will complete routine maintenance on the Application according to the published schedule. AssetWorks will publish schedules for subsequent years on its Customer Support web site. AssetWorks will endeavor to provide at least 30 days notice to any changes in the schedule, except in the event of emergency maintenance.

If AssetWorks is required to perform additional maintenance outside of the Scheduled Maintenance window, it will notify the Customer in writing of its request. The Customer and the AssetWorks will mutually agree on the downtime. All routine, additional, and emergency maintenance will be considered a period of Scheduled Maintenance.

Data Classification

The AssetWorks Data Center maintains SSAE16 SOC2 certification/ISO27001 compliance as a facility housing CUI (Controlled Unclassified Information) data at our facility based on the DOJ assessment using NIST 800-53 guidelines for FISMA (Federal Information Standards Management Agency) standards.

The service levels set forth below apply to the Services provided by AssetWorks under the Agreement.

G. AVAILABILITY

AssetWorks will use commercially reasonable efforts to provide Services with an average of 99% Availability (as such term is hereinafter defined) for each quarter during the Term. For purposes of the Agreement, "Availability" during any quarter refers to an Authorized User's ability to log into the Application during such quarter, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- "x" is the Availability of the Application during the quarter;
- "y" is the total number of hours in such quarter minus the number of hours during such quarter that the Customer is unable to log into the Application because of (a) regularly scheduled maintenance windows for the Application and for times in which Customer has been notified in writing (including e-mail) by AssetWorks in advance thereof; (b) a Force Majeure Event; (c) non-performance of Hardware, Software, ISP connections, and other equipment that is not provided by AssetWorks or certified by AssetWorks for use in conjunction with the Services (except as such non-performance is directly or indirectly caused by AssetWorks).
- "z" is the number of hours in such month during which the Customer is unable to log into the Application (other than for reasons set forth in the definition of "y" above); provided that AssetWorks has been notified or is otherwise aware (or reasonably should be aware) of Customer's inability to utilize the Application.

H. FEE ADJUSTMENT

In the event that AssetWorks does not meet the Availability levels set forth ~~below~~above in any given month, the amount of fees payable by Customer will be reduced as follows:

In the event the average Availability for the Application is less than 99% during any two consecutive quarters, Customer will receive a credit to its account with AssetWorks of 5% of the amount of a quarter's aggregate AssetWorks Hosting Services fees paid or payable by Customer to AssetWorks.

AssetWorks' obligation to provide Customer with fee adjustments as set forth above is conditioned on Customer providing detailed written notice to AssetWorks of its contention that AssetWorks was unable to meet the applicable Availability levels. Upon receipt of such notice, AssetWorks shall have 30 calendar days to investigate the contention. If, at the end of the 30 calendar day period it is determined that AssetWorks did in fact fail to meet the applicable Availability levels, Customer will receive the appropriate credit to its account during the next invoice cycle.

Commented [CS(10)]: Something missing?

Commented [LR11R10]: No, the credits are listed below. Availability is measured quarterly so we cannot agree to monthly.

The remedies set forth in this Section of this Attachment shall be Customer's sole remedy and AssetWorks' entire liability in the event of a breach of this Agreement, including the failure of any Availability measurements to meet the thresholds set forth above.

ATTACHMENT E – HARDWARE TERMS

1. **PRICE/SPECIFICATIONS.** Price and specifications are subject to change without notice. AssetWorks LLC is not responsible for typographical and/or photographic errors.

2. **PAYMENT TERMS.** All Hardware will be billed upon delivery. All FuelFocus Integration Licenses will be billed upon delivery of Hardware. Please inspect all orders upon receipt. Please email fuelsupport@assetworks.com to request an RMA for any missing, damaged, or incorrect orders. You may also call 610-225-8350.

3. **RETURN POLICY.** AssetWorks LLC products may be returned within 30-days of invoice date for refund, replacement, or exchange. All product returns must have a Returned Merchandise Authorization (RMA) number issued by AssetWorks marked clearly on the return package, or the package will be refused, and no credit will be issued.

To request an RMA, please email fuelsupport@assetworks.com. RMAs are valid for 15 days from the date of issuance. The following information is required for all RMAs:

- a. The invoice or packing list number;
- b. The product name and part number;
- c. Company name, point of contact, mailing address, email address, and telephone number; and
- d. A reason for the return

If you wish to make a return or exchange, you must present the merchandise within 30 days of purchase. All goods must be returned in their original packaging. If the items are not received in their original and unused condition, a minimum re-stocking fee of

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18% will be charged. Product that has been used will not be accepted for return or exchange unless under warranty or maintenance contract. Product that has been altered without the specific authorization by AssetWorks will not be accepted. Send returns with the RMA number clearly marked on the package to:

AssetWorks LLC
Attn: RMA Department
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

All returns will be processed and fully inspected. All products must be returned in original condition including packaging, manuals, and accessories (as applicable).

4. **RETURN SHIPPING.** All returns must be shipped freight pre-paid.
5. **UNAUTHORIZED OR REFUSED RETURNS.** Packages without a Return Authorization Number will be refused. Additional charges may apply if all peripherals and accessories are not returned in the original packaging.
6. **RETURNS OLDER THAN 30 DAYS.** Returns older than 30 days from the invoice date will be subject to a 25% restocking fee. Only product that is in current production will be accepted and an RMA must be obtained in advance and clearly marked as stated above. No refunds will be given.
7. **WARRANTY START DATE.** "Start Date" as used in this policy means the date this product is shipped from AssetWorks manufacturing plus 3 months or the FuelFocus go live date, whichever comes first.

8. **LIMITED HARDWARE WARRANTY.** Warranty coverage for AssetWorks LLC (FuelFocus) products are described below. Additional support coverage can be purchased with your AssetWorks products. Please consult your local AssetWorks sales professional for annual support and Services fees. The terms and conditions governing your warranty on AssetWorks products are located below. Such terms and conditions supersede all other terms, unless otherwise agreed by AssetWorks.

AssetWorks, LLC ("FuelFocus") provides a 1 year limited product Hardware warranty to purchasers of FuelFocus products. AssetWorks warrants that the product Hardware will be free from defects in materials and workmanship during the warranty period, subject to the following:

- (a) Labor and travel costs are not included, unless required under contract specific terms;
- (b) AssetWorks will supply new or rebuilt parts to replace parts that are found to be defective while within the warranty period;
- (c) New installations must be registered with the FuelFocus Support Center within 48 hours of installation to receive warranty benefits, otherwise, the warranty period commences on the date of the invoice;
- (d) Help Desk Support is available between the hours of 8:00AM- 5:00PM EST Monday through Friday upon a Hardware System Failure;
- (e) AssetWorks will repair or replace such product Hardware within 14 working days of its receipt of the failed Hardware, if in advance of its receipt, such Hardware (1) was evaluated by AssetWorks Technical Support in person or via telephone, and (2) received a Technical Support RMA number from AssetWorks;
- (f) Further, the product Hardware must be shipped, shipment pre-paid, to AssetWorks, and the RMA number must be clearly indicated on the shipping box and papers;
- (g) Problems caused by faulty installation are not covered under this warranty. This warranty applies only if the equipment has been installed and used in accordance with the AssetWorks Installation Manual;
- (h) Use of service personnel other than qualified AssetWorks service providers without prior written approval of the FuelFocus Product Manager will void the warranty claim;
- (i) Use of non AssetWorks replacement parts, defects caused by the use of unauthorized addition of non AssetWorks parts, or by the unauthorized alteration of FuelFocus parts or equipment will void this warranty;
- (j) Damage suffered by FuelFocus equipment resulting from shipping, accident, power surges, neglect, misuse, acts of Nature, or abuse are not covered by this warranty.

9. **LIMITED SOFTWARE WARRANTY.** AssetWorks provides a 1 year limited Software warranty to licensees of FuelFocus Software accompanying AssetWorks Hardware. AssetWorks warrants that the media on which the Software is delivered will be free of defects in material and workmanship for a period of 1 year following delivery of the Software to licensee. AssetWorks warrants that the Software, when used in accordance with the terms of the AssetWorks Software license, will operate substantially as set forth in the applicable AssetWorks Documentation for a period of 1 year following delivery of the Software to licensee.

10. WARRANTY LIMITATIONS. AssetWorks' warranties as set forth herein ("Warranty") are contingent on proper use of the FuelFocus Hardware and Software ("Products") and do not apply if the Products have been modified without AssetWorks' written approval, or if the Products' serial number label is removed, or if the Product has been damaged. The terms of the Warranty are limited to the remedies as set forth in this Warranty.

THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER RIGHTS, CONDITIONS AND WARRANTIES. ASSETWORKS MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE, HARDWARE, PRODUCTS, DOCUMENTATION OR ASSETWORKS SUPPORT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ASSETWORKS DOES NOT WARRANT THAT ANY PRODUCTS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ITS PRODUCTS CAN BE CORRECTED. IN NO EVENT SHALL ASSETWORKS BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST DATA), HOWEVER CAUSED WHETHER OR NOT ASSETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. TECHNICAL SUPPORT ACCESS. During the warranty period, toll free phone support is offered 5 days per week (8 a.m. to 5:00 p.m., Monday through Friday, except holidays). Calls left after hours will be returned the next business day. Access to Technical Support after warranty period is on a commercially reasonable basis (unless an AssetWorks Support Contract is purchased for all systems owned by the customer).

12. SOFTWARE UPDATES. During the warranty period, Software updates for system Software and Software products released by AssetWorks are available by contacting AssetWorks Technical Support. System Software updates include applicable minor releases (e.g. Release 2.0 to 2.1) to the AssetWorks family of products as well as major feature releases (e.g. Release 2.x to 3.0). Customer must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support. Software updates released after the initial 1 year warranty period are available as an upgrade product for the then applicable list price.