

# ISSUING DEPARTMENT INPUT DOCUMENT

## CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

New   
  OTR   
  Sole Source   
  Bid Waiver   
  Emergency   
 Previous Contract/Project No. L9130-5/21-5

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

Requisition No./Project No.: RQID2100489   
 TERM OF CONTRACT 5 YEAR(S) WITH  YEAR(S) OTR

Requisition /Project Title: IBM HARDWARE, SOFTWARE, MAINTENANCE, SUPPORT, AND SERVICES

Description: This contract will allow ITD to continue to purchase maintenance of IBM proprietary hardware and software and obtain the services required to support IBM infrastructure in support of critical applications embedded throughout many County departments.

Issuing Department: ITD   
 Contact Person: Julian Manduely   
 Phone: 3055968610

Estimate Cost: \$38,000,000

Funding Source: Proprietary   
FEDERAL   
OTHER Internal Ser

### ANALYSIS

<b>Commodity Codes:</b>	<span style="border: 1px solid black; padding: 2px;">92045</span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>
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.					
	<b><u>EXISTING</u></b>	<b><u>2<sup>ND</sup> YEAR</u></b>	<b><u>3<sup>RD</sup> YEAR</u></b>		
<b>Contractor:</b>	<span style="border: 1px solid black; padding: 2px;">IBM Corporation</span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>		
<b>Small Business Enterprise:</b>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>		
<b>Contract Value:</b>	<span style="border: 1px solid black; padding: 2px;">\$45,772,500</span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>		
<b>Comments:</b>	<span style="border: 1px solid black; padding: 2px;"></span>				

Continued on another page (s):     YES     NO

### RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
<b>SBE</b>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>	<span style="border: 1px solid black; padding: 2px;"></span>

Basis of Recommendation:

Signed:    
 Date sent to SBD: 7/25/2022

Date returned to SPD:

IBM Master Agreement for Hardware, Software, Maintenance, Support, and Services  
Agreement No. TBD

THIS HARDWARE, SOFTWARE, MAINTENANCE, SUPPORT, AND SERVICES AGREEMENT ("AGREEMENT") IS MADE ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1<sup>ST</sup> STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY" OR "MDC") AND IBM CORPORATION, A NEW YORK CORPORATION, HAVING ITS PRINCIPLE PLACE OF BUSINESS AT 1 ALHAMBRA PLAZA, WUITE 1415, CORAL GAB LES, FL 33134 (HEREINAFTER REFERRED TO AS "IBM OR "SELLER").

WITNESSETH:

WHEREAS, IBM has offered to provide Hardware, Software, Maintenance, Support and Services, that shall conform to the terms and conditions of this Agreement including all associated addenda and attachments, incorporated herein by referenced; and,

WHEREAS, the County desires to provide to procure from IBM such Hardware, Software, Maintenance, Support, and Services for the County, in accordance with the terms and conditions of this Agreement;

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

**ARTICLE 1. DEFINITIONS**

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

- a) The term "Change Order" or "Extra Work" or "Additional Work" to mean work resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in a mutually approved Statement of Work (SoW).
- b) The terms "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, and all associated addenda and attachments.
- c) The term "Contract Date" to mean the date on which this Agreement is effective.
- d) The terms "Seller" or "Consultant" or "Vendor" or "Seller" to mean International Business Machines Corporation ("IBM"), ("IBM Corporation") and its permitted successors and assigns.
- e) The term "County" to mean Miami-Dade County, a political subdivision of the State of Florida, including any subSellers, agents, authorized by the County to use the Licensed Software in accordance with this Agreement.
- f) The term "Days" to mean calendar days.
- g) The term "Deliverables" to mean all documentation and any items of any nature submitted by IBM to the County's Project Manager for review and approval pursuant to a mutually agreed to Statement of Work (SoW).
- h) The term "Existing Hardware" to mean the hardware currently installed at a Miami-Dade County site as identified in any attachments to this Agreement.

- i) The term "Hardware" to mean the new hardware components sold by the IBM under this Agreement.
- j) The term "Licensed Software" to mean the computer programs licensed by IBM under this Agreement.
- k) The term "Maintenance" to mean IBM Maintenance Services as set forth in the IBM product documentation as provided under this Agreement.
- l) The terms "Scope of Services" or "Scope of Work" to mean "Scope of Services" that details the work to be performed by IBM or SubSeller under a mutually agreed upon Statement of Work (SoW).
- m) The terms "SubSeller" or "Subconsultant" to mean any person, firm, entity or organization, other than the employees of IBM, who contracts with IBM to furnish labor, or labor and materials, in connection with the Work or Services to the County, whether directly or indirectly, on behalf of IBM as provided under this Agreement.
- n) The term "Third-Party" to mean any company or subSeller, other than IBM, who will provide software, hardware, and/or services in order to fulfill the requirements under this Agreement.
- o) The term "Machine" to mean a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the County.
- p) The term "Service" to mean a performance of a task, assistance, support, or access to resources (such as information database) that IBM makes available to the County.
- q) The term "Program" to mean an IBM-branded computer program and related material available for license from IBM subject to payment of charges.
- r) The term "Attachments" to mean documents that are part of this Agreement that contain terms that may apply to more than one Product or Service transaction
- s) The term "Transaction Documents" to mean documents that contain specific details and terms related to each individual transaction.
- t) The term "Date of Installation" to mean the following:
  - i. For an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if the County defers installation, makes it available to the County for subsequent installation by IBM;
  - ii. For a County-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and For a Program:
    - 1. Basic license, the second business day after the Program's standard transit allowance period,
    - 2. Copy, the date (specified in a Transaction Document) on which IBM authorizes the County to make a copy of the Program, and
    - 3. Chargeable component (also called a feature), the date the County uses the chargeable component or copy. The County agrees to notify IBM of the chargeable component's Date of Installation.

## **ARTICLE 2. ATTACHMENTS AND TRANSACTION DOCUMENTS**

Additional terms for Products and Services are included in documents called "Attachments" and Transaction Documents" provided by the Seller. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice,

exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. The County may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

This Contract shall include the following attachments:

**Attachment 1: IBM Client Relationship Agreement**

IBM Delegation of Authority  
IBM Client Relationship Agreement  
IBM Agreement for the Exchange of Confidential Information  
IBM Discounts & Pricing Structure  
IBM Training & Conferences

**Attachment 2: Hardware & Maintenance**

Hardware Product Lines  
Technical Services Attachment for Technology Support Services  
(TSS) for State & Local Government  
TSA Optional Services  
Attachment for IBM Power Systems Temporary Capacity on Demand

**Attachment 3: Software Portfolio for System Z, Passport Advantage, & Saas, Software**

Software Portfolio  
International Passport Advantage Agreement & Attachments for Monthly Licenses, Cloud Offerings, & Appliances  
US State, Local, and Education (SLED) Attachment for Subscription Licenses  
International Program License Agreement  
International Agreement for the Acquisition of Software Maintenance  
Current Inventory

**Attachment 4: Professional Services**

Overview of consulting & services offerings  
GSA Contract #G-35F-110DA Services – IT Professional Services  
GSA Remote Technical Support Services  
Cybersecurity Labor Rates  
GSA Contract #GS-35F-110DA – Services Ancillary SIN Services (Labor Categories)

**Attachment 5: Green Initiatives**

Resilience, Sustainability & Energy Solutions  
Green Initiatives

**Attachment 6: Cloud Solutions**

IBM Internet Delivered Offerings  
Cloud Solutions & Capabilities

**Attachment 7: Installment Payment Agreement for State and Local Government Sample Forms**

Should there be any inconsistency between the terms and conditions of this Agreement and any terms referenced in any Attachments to this Agreement, the terms and conditions of this Agreement shall take precedence unless modified by a mutually agreed to Amendment to this Agreement.

**ARTICLE 3. AGREEMENT TERM**

3.1 This Agreement shall succeed Contract No. L9130-5/21 expiring on XXX, between the County and IBM, which became effective August 1, 2016, including IBM Customer Agreement L9130, August 1, 2016. Products and

**Commented [PS(1):** The County will be exercising an extension to L9130 because we do not have enough time to make it on a November BCC agenda. I will update this date once we have a final expiration date. The current contract allows the County to extend it up to 180 days.

Maintenance Services purchased under Contract No. L9130-5/21 shall continue to be governed by the terms and conditions of Contract No. L9130-5/21, notwithstanding the expiration of that contract, for the remainder of the term identified in such purchase of Products or Maintenance Services or until the County elects to acquire those Products and Maintenance Services under the terms and conditions of this Agreement.

- 3.2 This Agreement shall become effective upon approval of the County's Board of County Commissioners and the expiration or waiver of any Mayoral veto period and shall be for the duration of five years.
- 3.3 Extension. Miami-Dade County this Agreement may be extended for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals.
- 3.4 Notification. Miami-Dade County this Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period, upon approval from the Board of County Commissioners.

#### ARTICLE 4. NOTICE REQUIREMENTS

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

(1) To the County Project Manager for each area:

Miami-Dade County  
Information Technology Department  
5680 S.W. 87<sup>th</sup> Avenue  
Miami, FL 33173  
  
Attention: Julian Manduley  
Phone: 305-596-8610  
Fax: 305-275-7696  
E-mail: [jmandul@miamidade.gov](mailto:jmandul@miamidade.gov)

and to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974  
  
Attention: Santiago A. Pastoriza  
Phone: (305) 375- 1084  
Fax: (305) 375- 5688  
E-Mail: [spastor@miamidade.gov](mailto:spastor@miamidade.gov)

(2) To the Seller

IBM Corporation  
Attention: Emily B. Loos  
1 Alhambra Plaza, Suite 1415  
Coral Gables, FL 33134  
  
Phone: 305-206-5022  
Fax: 305-441-5155  
E-mail: [eloos@us.ibm.com](mailto:eloos@us.ibm.com)

**Commented [PS(2)]:** Please confirm that this information is still accurate.

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 5. PRICING

The Seller may offer additional incentive discounts to those referenced in this Agreement to Miami-Dade County at any time during the contractual term and any extensions thereof. The Seller agrees that all pricing offered under this Agreement shall not exceed the then current IBM GSA Schedule price list to include the GSA Labor Hourly Rates as may be amended from time to time or, in the event that IBM GSA Schedule pricing is unavailable, pricing shall not exceed the amounts as set forth in the price list attached to this Agreement (**Attachment 4: IBM GSA Schedule GS-35F-110DA**, Information Technology Services Charges).

**Commented [PS(3)]:** IBM, please update this line as there are various documents within Attachment 4 and I want to make sure we get it right.

#### ARTICLE 6. CHARGES AND PAYMENT FOR SERVICES/AMOUNT OBLIGATED

6.1 The Seller warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Seller deemed necessary in order to determine the price the Seller will charge to provide the Work and Services to be performed under this Agreement. The compensation for all Work and Services performed under this Agreement, including all costs associated with such Work and Services, shall be in accordance with Article 5, "Pricing." The County shall have no obligation to pay the Seller any additional sum in excess of what is stated in Article 5, "Pricing", except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Seller.

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

6.2 Charges. Amount payable for Products or Services are based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which the County prepays must be used within the applicable contract period; and ii) the Seller does not give credits or refunds for any prepaid or other charges already due or paid, provided Seller has not unreasonably delayed services past the expiration date of the contract period.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. The Seller invoices charges based on actual time and materials expended or the County's actual use, subject to any specified minimum commitment.

6.3 Usage Charges. One time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance services). The County agrees to provide actual usage data as described in an Attachment or Transaction Document.

If the County makes changes to its environment that impacts usage charges (for example, change authorized capacity for Machines or change processor size or configuration for Programs), the County agrees to promptly notify the Seller and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that the Seller changes the basis of measurement, its terms for changing charges will apply provided the County is given reasonable notice of such change and is allowed to cancel the service without any additional charge prior to such change in the basis of measurement

6.4 Changes to Charges. From time to time, the Seller may change its charges. The County receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, the Seller may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement in accordance with Article 5, "Pricing", by giving the County three (3) months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date the Seller specifies in the notice.

Upon reasonable notice, the Seller may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to the County's business and may be conducted on the County's premises, during the County's normal business hours. The County agrees to i) provide records, system

tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

6.5 Travel. With respect to travel costs and travel related expenses, the Seller 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.

6.6 Invoices. All invoices issued by the Seller, shall be taken from the books of account kept by the Seller, shall be supported by any reasonable documentation required by the County, shall show the County's Agreement number, and shall have a unique invoice number assigned by the Seller. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime vendors under either services or goods contracts pursuant to Sections 2-8.1.1.1.1 or 2-8.1.1.1.2, respectively, that are a SBE contract set-aside, bid preference or contain a sub-Contractor goal, shall be promptly reviewed and payment made to the certified small businesses on those amounts not in dispute, within fourteen (14) calendar days of receipt of such billing or invoice. All payments for undisputed amounts due from the County or the Public Health Trust, and not made within the time specified by this section, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Seller to the County, whether under this Agreement or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Seller under this Agreement. Such retained amount shall be applied to the amount owed by the Seller to the County. The Seller 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 Seller for the applicable payment due herein.

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

**(1) To the County Project Manager for each area:**

Information Technology Department  
5680 S.W. 87<sup>th</sup> Avenue  
Miami, FL 33173  
Attention: Julian Manduley  
Phone: 305-596-8610  
E-mail: [jmandul@miamidadegov](mailto:jmandul@miamidadegov)

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

**ARTICLE 7. CONFIDENTIALITY**

7.1 As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law, Section 119 of the Florida Statutes. Notwithstanding anything else in this Article to the contrary, the County's compliance with, or good faith attempt to comply with the requirements of Chapter 119 of Florida Statute shall not be considered breach of this Agreement.

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Seller in the course of the performance of the Agreement, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Seller or its employees, agents, subconsultants or suppliers for any purpose other than for the benefit of the County, unless required by law.

- b) 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 Seller nor its employees, agents, subconsultants 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 Seller expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

7.2 Maintenance of Confidential Information. The Seller shall advise each of its employees, agents, subconsultants 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 subconsultants or supplier's employees, present or former. In addition, the Seller agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

7.3 Injunctive Relief. It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Seller shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Seller or its employees, agents, subconsultants or suppliers without the prior written consent of the County.

7.4 Survival. Licensee's obligations under this Article 7 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

**ARTICLE 8. INSURANCE**

The Seller shall furnish to the Internal Services Department / Procurement Management Services, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Seller as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Seller.

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

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

or

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

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY  
111 NW 1<sup>ST</sup> STREET  
SUITE 2340**

**Commented [PS(4)]:** This insurance language was pulled from the previous contract. I am currently waiting on Risk Management to verify. This is not the final recommendation.



## MIAMI, FL 33128

**ARTICLE 9. DEFAULT AND TERMINATION**

9.1 Termination. In addition to any other Termination set forth below, the County may terminate this Agreement if the Seller attempts to meet its obligations under this Agreement with the County through fraud, misrepresentation or material misstatement.

- a) The County may, as a further sanction, terminate or cancel any other Seller Agreement(s) has with the County
- b) The foregoing notwithstanding, if the Seller attempts to meet its obligations with the County under this Agreement through fraud, misrepresentation or material misstatement, the Seller may be debarred from County contracting for the maximum extent permitted by law in accordance with the County debarment procedures. The Seller may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

9.2 Termination for Convenience. In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement or any Transaction Document by written notice to the Seller and in such event:

- a) The Seller 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) take no action which will increase the amounts payable by the County under this Agreement; and
- b) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Seller will be compensated as stated in the payment Articles, herein, for the portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- c) All compensation pursuant to this Article are subject to audit.

9.3 Events of Default. This Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Article 7 (Confidentiality) or makes an assignment in violation of Article 14 (Nonassignability); (3) if the Seller becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

9.4 Effective Date of Termination. Termination due to a material breach of Articles 7 (Confidentiality), shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

9.5 Termination and Withdrawal of a Service. Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the service. The County may terminate a Service, on notice to the Seller provided that the County has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. The Termination and Withdrawal of a Service by the County may also establish a basis for Default under Section 9.3 of this Agreement. For a maintenance Service, the County may terminate without adjustment charge, provided any of the following circumstances occur:

- a) The County permanently removes the eligible Product, for which the Services is provided, from productive use within the County's Enterprise;
- b) the eligible location, for which the Service is provided, is no longer controlled by the County (for example, because of sale or closing of the facility); or
- c) the Machine has been under maintenance Service for at least one year and the County gives the Seller one month's written notice prior to terminating the maintenance Service.

The Seller may withdraw a Service or support for an eligible Product on three (3) months written notice to the County. If the Seller withdraws a Service for which the County has prepaid and the Seller has not yet fully provided it to the County, the Seller will give the County a prorated refund not withstanding any other provision of this Agreement. The prorated refund shall be calculated based on the date of withdrawal of services and the length of the Service Agreement, or a percentage of the unused Service minus

the value of the Service already provided, whichever is greater.

#### **ARTICLE 10. SHIPPING TERMS**

Shipping will be done on an FOB Destination basis. Invoicing and Shipping Address will be provided in the individual Purchase Orders issued against this contract. The County may change this information by giving written notice to Seller.

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

11.1 The Seller shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Seller in all aspects of the Services. At the written request of the County explaining cause, the Seller shall promptly remove from the Project any of the Seller's employee(s), Sub-Contractor, or any other person performing Services hereunder for cause. The Seller agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Seller.

11.2 The Seller shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE SELLER**

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

#### **ARTICLE 13. INDEPENDENT SELLER RELATIONSHIP**

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

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

#### **ARTICLE 14. NONASSIGNABILITY**

The Seller 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 15. INSPECTOR GENERAL REVIEWS**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Seller 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 Seller'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 herein, apply to the Seller, its officers, agents, employees, sub-Contractors 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 Seller in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Seller or any third party.

#### **Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has

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

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

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Seller, 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 Seller from the Inspector General or IPSIG retained by the Inspector General, the Seller shall make all applicable 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 applicable documents and records in the Seller's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful sub-Contractors 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 16. GOVERNING LAW**

This Agreement, including Attachments, and all matters relating to this Agreement whether in Agreement, statute, tort (such as negligence, or otherwise) shall be governed and construed in accordance with the laws of the State of Florida, without application of the conflicts of law principles. The venue of any action on the Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights of obligations of the parties hereto shall be brought in the courts of the State of Florida.

#### **ARTICLE 17. COUNTY USER ACCESS PROGRAM (UAP)**

**17.1 User Access Fee:** Pursuant to Miami-Dade County Budget Ordinance No. 03-192, 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 this solicitation 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 Seller 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. Vendor participation in this invoice reduction portion of the UAP is mandatory.

**17.2 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 Seller must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Seller participation in this joint purchase portion of the UAP, however, is voluntary. The Seller shall notify the ordering entity, in writing, within 3 workdays 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 Seller 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 Seller 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 Seller and shall be paid by the ordering entity less the 2% UAP.

**17.3 Seller Compliance:** If a Seller fails to comply with this Article, that Seller may be considered in default by the County.

#### **ARTICLE 18. ANNUAL APPROPRIATION**

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, except as to the portions of payments agreed upon and for which funds have been appropriated and budgeted. There will be no early termination charges from the Seller for canceling services during the year except for charges incurred for services performed under this Agreement prior to the County's cancellation notice, and Seller will deliver to County all Deliverables performed up to the cancellation notice.

#### **ARTICLE 19. 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 20. VENDOR REGISTRATION/CONFLICT OF INTEREST**

##### a) Vendor Registration

The Seller 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 Seller'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/Seller 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 Seller confirms its knowledge of and commitment to comply with the following:

- |   |  |
|---|--|
| <p>1. <b>Miami-Dade County Ownership Disclosure Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p>        | <p>4. <b>Miami-Dade County Disability and Nondiscrimination Affidavit</b><br/>(Section 2-8.1.5 of the Code of Miami-Dade County)</p> |
| <p>2. <b>Miami-Dade County Employment Disclosure Affidavit</b><br/>(Section 2.8.1(d)(2) of the Code of Miami-Dade County)</p> | <p>5. <b>Miami-Dade County Debarment Disclosure Affidavit</b><br/>(Section 10.38 of the Code of Miami-Dade County)</p>               |
| <p>3. <b>Miami-Dade County Employment Drug-free Workplace Certification</b></p>   |  |

- |  |  |
|--|--|
| <p>6. <b>Miami-Dade County Vendor Obligation to County Affidavit</b><br/>(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>7. <b>Miami-Dade County Code of Business Ethics Affidavit</b><br/>(Article I, Section 2-8.1(f) of the Code of Miami-Dade County)</p> <p>8. <b>Miami-Dade County Family Leave Affidavit</b><br/>(Article V of Chapter 11 of the Code of Miami-Dade County)</p> <p>9. <b>Miami-Dade County Living Wage Affidavit</b><br/>(Section 2-8.9 of the Code of Miami-Dade County)</p> <p>10. <b>Miami-Dade County Domestic Leave and Reporting Affidavit</b> (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p> <p>11. <b>Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit.</b><br/>(Section 448.095, of the Florida State Statutes)</p> | <p>12. <b>Miami-Dade County Pay Parity Affidavit</b><br/>(Resolution No. R-1072-17)</p> <p>13. <b>Miami-Dade County Suspected Workers' Compensation Fraud Affidavit</b><br/>(Resolution No. R-919-18)</p> <p>14. <b>Office of the Inspector General</b><br/>(Section 2-1076 of the Code of Miami-Dade County)</p> <p>15. <b>Small Business Enterprises</b><br/><i>The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.</i></p> <p>16. <b>Antitrust Laws</b><br/><i>By acceptance of any contract, the Seller agrees to comply with all antitrust laws of the United States and the State of Florida.</i></p> |
|--|--|

b) 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 21. FORCE MAJEURE**

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

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

#### **ARTICLE 22. EXTENSION OF TIME NOT CUMULATIVE**

In the event the Seller shall be delayed concurrently by two or more of the causes identified in Article 21, "Force Majeure" above, the Seller shall be entitled to a separate extension of time for each one of the causes but only one time period of extension shall be granted for the delay. In addition, the Seller shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Seller shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

**ARTICLE 23. 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 Seller and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 24. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS**

As applicable, Seller 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 Sellers 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 Seller is certifying that the Seller is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

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

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

#### **ARTICLE 25. NONDISCRIMINATION**

During the performance of this Contract, Seller 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 Seller 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 Seller or any owner, subsidiary or other firm affiliated with or related to the Seller 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 Seller submits a false affidavit pursuant to this Resolution or the Seller violates the Act or the Resolution during the term of this Contract, even if the Seller was not in violation at the time it submitted its affidavit.

#### **ARTICLE 26. CONFLICT OF INTEREST**

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

#### **ARTICLE 27. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

27.1 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 Seller 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

27.2 Communicate in any way with any Seller, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

27.3 Except as may be required by law, the Seller and its employees, agents, sub-Contractor and suppliers will not represent, directly or indirectly, that any product or service provided by the Seller or such parties has been approved or endorsed by the County.

#### **ARTICLE 28. BANKRUPTCY**

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

#### **ARTICLE 29. 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 30. LIENS**

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

#### **ARTICLE 31. FIRST SOURCE HIRING REFERRAL PROGRAM**

Pursuant to Section 2-2113 of the Code, for all contracts for goods and services, the Seller, 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 Seller is free to fill its vacancies from other sources. Seller 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 Seller 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.careersourcesf.com/firstsource/>.



**ARTICLE 32. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Seller 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 Seller 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 SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SELLER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, [ISD-VSS@MIAMIDADE.GOV](mailto:ISD-VSS@MIAMIDADE.GOV), 111 NW 1<sup>ST</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128.**

**ARTICLE 33. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)**

By entering into this Contract, the Seller 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 Seller effective January 1, 2021 and requiring all Sub-Contractor to provide an affidavit attesting that the Sub-Contractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Sub-Contractor 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 Seller 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 Seller, the Seller 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 34. PREPARATION OF CONTRACT**

This Agreement is the result of negotiation between the parties hereto and has been typed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of any of the parties hereto.

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

Seller

Miami-Dade County

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

DRAFT