

To: The Honorable Mayor and Council Members

From: Alberto Destrade, Purchasing Director 

Date: April 26, 2016

RE: **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXERCISE THE THIRD OPTION TO RENEW DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES AGREEMENTS, AS AMENDED, BETWEEN THE CITY OF NORTH MIAMI AND DRC EMERGENCY SERVICES, LLC, ASHBRIIT, INC., AND CROWDER-GULF JOINT VENTURE, INC., AS PRIMARY, SECONDARY AND TERTIARY CONTRACTORS, RESPECTIVELY, FOR THE REMOVAL, HAULING AND DISPOSAL OF DEBRIS RESULTING FROM A DECLARED EMERGENCY EVENT, ON AN AS-NEEDED, WHEN-NEEDED BASIS, IN ACCORDANCE WITH THE CITY OF NORTH MIAMI INVITATION FOR BID NO. 23-10-11 DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICE (PRE-QUALIFICATION); FURTHER AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS IN THE EVENT SUCH EMERGENCY SERVICES ARE REQUIRED TO BE PROCURED, IN ACCORDANCE WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

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**RECOMMENDATION**

Staff is requesting that the Mayor and City Council authorize the City Manager to exercise the third and final renewal option of the contracts with DRC Emergency Services, Inc. (DRC), Ashbriit, Inc. (Ashbriit) and Crowder-Gulf Joint Venture, Inc. (Crowder-Gulf) to provide the City with "Disaster Debris Removal and Disposal Services" on an as-needed basis.

**BACKGROUND**

On March 1, 2011, the City issued Invitation for Bids (IFB) No. 23-10-11 "Disaster Debris Removal and Disposal Services" (Solicitation) and subsequently received responses from eleven (11) vendors. Five (5) vendors were deemed non-responsive for failure to meet the minimum requirements set by this Solicitation. Of the remaining six (6) vendors, DRC, Ashbriit, and Crowder-Gulf submitted the lowest pricing and were recommended for award to City Council.

On June 14, 2011 the City Council passed and adopted Resolution No. 2011-75 awarding DRC, Ashbriit, and Crowder-Gulf as the primary, secondary, and tertiary vendors, respectively, for an initial term of three (3) years, with the option to renew for three (3) additional one-year terms.

This renewal represents the last of the renewal options allowable under the current contract for each of these firms. Each firm has also agreed to renew their contracts for this final term under the same price schedule as contained in the original agreements.

In order to ensure that the City continues to have the resources in place and readily available to assist the City in the removal, hauling and disposal of debris resulting from a declared emergency, staff recommends the approval of this final renewal for each of these firms.

**FUNDING SOURCE**

The funding for this renewal has been allocated from the City's General Fund.

**ATTACHMENTS**

Resolution  
Resolution 2011-75 – Initial Award by City Council

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXERCISE THE THIRD OPTION TO RENEW DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES AGREEMENTS, AS AMENDED, BETWEEN THE CITY OF NORTH MIAMI AND DRC EMERGENCY SERVICES, LLC, ASHBRIIT, INC., AND CROWDER-GULF JOINT VENTURE, INC., AS PRIMARY, SECONDARY AND TERTIARY CONTRACTORS, RESPECTIVELY, FOR THE REMOVAL, HAULING AND DISPOSAL OF DEBRIS RESULTING FROM A DECLARED EMERGENCY EVENT, ON AN AS-NEEDED, WHEN-NEEDED BASIS, IN ACCORDANCE WITH THE CITY OF NORTH MIAMI INVITATION FOR BID #23-10-11 DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICE (PRE-QUALIFICATION); FURTHER AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS IN THE EVENT SUCH EMERGENCY SERVICES ARE REQUIRED TO BE PROCURED, IN ACCORDANCE WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, on March 1, 2011, the City of North Miami (“City”) advertised *Invitation For Bid #23-10-11 Disaster Debris Removal and Disposal Service (Pre-Qualification)* (“IFB”), seeking a pool of qualified contractors to provide the City with the necessary labor, supervision, materials, equipment, tools, vehicles, expertise and services necessary to remove, haul and dispose of debris resulting from a declared emergency event, on an as-needed, when-needed basis (“Services”); and

**WHEREAS**, DRC Emergency Services, LLC, Ashbriit, Inc., and Crowder-Gulf Joint Venture, Inc., were evaluated by City administration as the Primary, Secondary and Tertiary Contractors, respectively, for being the lowest-responsive, responsible bidders whose bids, qualifications and references demonstrated to be the most advantageous to the City (collectively referred to herein as “Contractors”); and

**WHEREAS**, Contractors have expressed their capabilities, expertise and willingness to perform the Services pursuant to the terms, conditions, requirements and specifications contained in the IFB; and

**WHEREAS**, on June 14, 2011, the Mayor and City Council passed and adopted Resolution No. R-2011-75, approving the selection of all three (3) Contractors and further authorized the City Manager to execute agreements with each Contractor; and

**WHEREAS**, in accordance with Resolution No. R-2011-75, the City Manager executed agreements (as subsequently amended) with each Contractor for the provision of Services, with an initial term of one (1) year commencing on June 1, 2013, and three (3) options to renew on a year-by-year basis (“Agreements”); and

**WHEREAS**, City administration desires to exercise the third and final Option to Renew Agreements with Contractors, commencing June 1, 2016, through May 31, 2017; and

**WHEREAS**, the Mayor and City Council have determined that the continuation and coverage of Services from Contractors for the provision of Services throughout the upcoming hurricane season, is essential to the protection of the public health, safety and welfare.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.**      **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to exercise the Third Option to Renew Disaster Debris Removal and Disposal Services Agreement, as amended, between the City of North Miami and DRC Emergency Services, LLC, Ashbritt, Inc., and Crowder-Gulf Joint Venture, Inc., as the primary, secondary and tertiary Contractors, respectively, for the removal, hauling and disposal of debris resulting from a declared emergency event, on an as-needed, when-needed basis, in accordance with the City of North Miami *Invitation for Bid #23-10-11 Disaster Debris Removal and Disposal Service (Pre-Qualification)*.

**Section 2.**      **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to issue purchase orders in the event such emergency services are required to be procured, in accordance with the Federal Emergency Management Agency (FEMA) guidelines

**Section 3.**      **Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.  
Vice Mayor Alix Desulme  
Councilman Scott Galvin  
Councilwoman Carol Keys, Esq.  
Councilman Philippe Bien-Aime

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

RESOLUTION NO. R-2011-75

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE SELECTION OF DRC EMERGENCY SERVICES, LLC, ASHBRIIT, INC., AND CROWDER-GULF JOINT VENTURE, INC., AS THE PRIMARY, SECONDARY AND TERTIARY CONTRACTOR, RESPECTIVELY, FOR THE REMOVAL, HAULING AND DISPOSAL OF DEBRIS RESULTING FROM A DECLARED EMERGENCY EVENT, ON AN AS-NEEDED, WHEN-NEEDED BASIS, IN ACCORDANCE WITH THE CITY OF NORTH MIAMI INVITATION FOR BID #23-10-11 DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICE (PRE-QUALIFICATION); FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS, IN SUBSTANTIALLY THE ATTACHED FORM, WITH THE THREE SELECTED CONTRACTORS FOR THE PROVISION OF THE STATED SERVICES; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

**WHEREAS**, on March 1, 2011, the City of North Miami ("City") advertised *Invitation For Bid # 23-10-11 Disaster Debris Removal and Disposal Service (Pre-Qualification)* ("IFB"), seeking a pool of qualified contractors to provide the City with the necessary labor, supervision, materials, equipment, tools, vehicles, expertise and services necessary to remove, haul and dispose of debris resulting from a declared emergency event, on an as-needed, when-needed basis ("Services"); and

**WHEREAS**, DRC Emergency Services, LLC, Ashbriit, Inc., and Crowder-Gulf Joint Venture, Inc., were evaluated by City administration as the Primary, Secondary and Tertiary Contractor, respectively, for being the lowest responsive, responsible bidders whose bids, qualifications and references demonstrated to be the most advantageous to the City; and

**WHEREAS**, all three Contractors have expressed their capabilities, expertise and willingness to perform the Services pursuant to the terms, conditions, requirements and specifications contained in the IFB; and

**WHEREAS**, the Mayor and City Council have determined that it is in the City's best interests to approve the selection of Contractors, and to authorize the City Manager to execute an agreement with each Contractor for the stated Services.

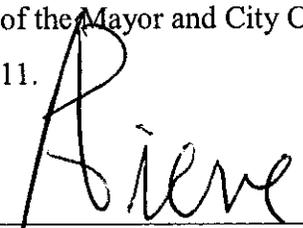
**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:**

**Section 1. Approval of Selection.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the selection of DRC Emergency Services, LLC, Ashbritt, Inc., and Crowder-Gulf Joint Venture, Inc., as the Primary, Secondary and Tertiary Contractor, respectively, for the removal, hauling and disposal of debris resulting from a declared emergency event, on an as-needed, when-needed basis, in accordance with the City of North Miami Invitation for Bid #23-10-11 Disaster Debris Removal and Disposal Service (Pre-Qualification).

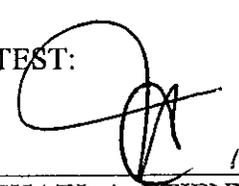
**Section 2. Authority of City Manager.** The City Manager is hereby authorized to execute agreements, in substantially the attached form, with the three (3) selected Contractors for the provision of the stated Services.

**Section 3. Effective Date.** This Resolution shall become effective immediately upon adoption.

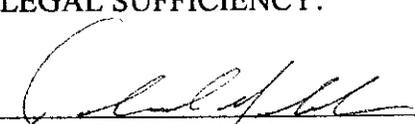
**PASSED AND ADOPTED** by a 4-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 14 day of June, 2011.

  
\_\_\_\_\_  
ANDRE D. PIERRE, ESQ.  
MAYOR

ATTEST:

  
\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
V. LYNN WHITFIELD  
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilman Galvin

Seconded by: Councilman Marcellus

**Vote:**

	<u>      </u> (Yes)	<u>      </u> (No)	Absent
Mayor Andre D. Pierre, Esq.	<u>      </u>	<u>      </u>	
Vice Mayor Michael R. Blynn, Esq.	<u>  X  </u>	<u>      </u>	
Councilperson Scott Galvin	<u>  X  </u>	<u>      </u>	
Councilperson Jean R. Marcellus	<u>  X  </u>	<u>      </u>	
Councilperson Marie Erlande Steril	<u>  X  </u>	<u>      </u>	

**CITY OF NORTH MIAMI  
PROFESSIONAL SERVICES AGREEMENT  
(IFB #23-10-11 Disaster Debris Removal and Disposal Services)**

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125<sup>th</sup> Street, North Miami, Florida ("City"), and \_\_\_\_\_, a corporation authorized to do business in the State of Florida, having its principal business office at \_\_\_\_\_ ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

**RECITALS**

**WHEREAS**, on March 1, 2011, the City advertised *Invitation For Bid # 23-10-11 Disaster Debris Removal and Disposal Service (Pre-Qualification)* ("IFB"), seeking a pool of qualified contractors to provide the City with the necessary labor, supervision, materials, equipment, tools, vehicles, expertise and services necessary to remove, haul and dispose of debris resulting from a declared emergency event, on an as-needed, when-needed basis ("Services"); and

**WHEREAS**, the Contractor was evaluated by the City as one of the most responsive, responsible bidder whose bid, qualifications and references demonstrated to be advantageous to the City; and

**WHEREAS**, the Contractor has expressed its capability, expertise and willingness to perform the Services in accordance with the terms, conditions, requirements and specifications contained in the IFB; and

**WHEREAS**, on \_\_\_\_\_, 2011, the Mayor and City Council of the City of North Miami, Florida, passed and adopted Resolution No. \_\_\_\_\_, approving the selection of Contractor and authorized the City Manger to execute an agreement for the provision of stated Services.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

**ARTICLE 1 - RECITALS**

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

**ARTICLE 2 - CONTRACT DOCUMENTS**

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 City of North Miami *Invitation For Bid # 23-10-11 Disaster Debris Removal and Disposal Service (Pre-Qualification)*, attached hereto by reference;

2.1.2 Contractor's response to the IFB ("Bid Submittal"), attached hereto by reference;

2.1.3 Contractor's Price Schedule, attached hereto by reference;

2.1.4 City Prequalification form, attached hereto as Exhibit A;

2.1.5 City Tabulation of Price Quotes, attached hereto as Exhibit B;

2.1.6 Any additional documents which are required to be submitted by Contractor pursuant to this Agreement and IFB.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The IFB.

2.3 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the IFB prior to Contractor submitting its Bid Submittal or the right to clarify same shall be waived.

### **ARTICLE 3 – TERM OF AGREEMENT**

3.1 The initial term of this Agreement shall be a period of three (3) years commencing on June 1, 2011, unless terminated earlier by either Party.

3.2 The Agreement may be extended for an additional three (3) years, on a year-by-year basis, providing the Parties agree in writing to exercise this option.

3.3 The City reserves the right to request and consider yearly price quotations from Contractor prior to renewal.

3.4 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to timely perform Services or any portion thereof, the City may request that the Contractor, within a reasonable period of time, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

#### **ARTICLE 4 - COMPENSATION**

4.1 Payment to Contractor for Services to the City will be made in accordance with the terms of the IFB.

4.2 Contractor shall be paid within thirty (30) days of receipt of invoice the total shown due, provided the City has accepted Contractor's performance.

4.3 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

#### **ARTICLE 5 - SCOPE OF SERVICES**

5.1 Contractor shall provide the Services set forth in the Contract Documents and in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession. The City reserves the right to issue directives as necessary to facilitate the flow of work or to minimize any conflict or hazard with public operations.

5.2 Contractor shall provide Services under the direction of and to the satisfaction of the City. The City shall make decisions on all claims regarding the interpretation of the Contract Documents and on all other matters relating to the execution and progress of the Services rendered by Contractor.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.4 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

5.5 Contractor shall ensure that the public roadways and any improvements or appurtenants in the vicinity of a worksite remain open to the public whenever and wherever possible, and that sufficient signage is provided to direct the public or other invitees during performance of the Services. The Contractor shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

5.6 Contractor represents, with full knowledge that the City is relying upon these representations when entering into this Agreement with the Contractor, that the Contractor has

the professional expertise, ability, capacity, skill, licenses, financial resources, and experience to perform the Services as described in the Contract Documents.

#### **ARTICLE 6 - CHANGES IN SERVICES**

6.1 One or more changes to Services within the general scope of this Agreement may be ordered by a Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and with the terms and conditions described in this Article.

6.2 A Change Order shall mean a written order to the Contractor executed by the Parties following execution of this Agreement, directing a change in Services, and may include a change in the agreed compensation and/or the time for Contractor's performance.

6.3 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement with the ordered changes in Services and the Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from, the work included within or affected by the executed Change Order.

#### **ARTICLE 7 - ENVIRONMENTAL AND SAFETY REQUIREMENTS**

7.1 Contractor shall comply and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations pertaining to the Services provided under this Agreement. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry standards, and to ensure that such protective devices are properly used by its employees, agents and subcontractors in the provision of Services.

7.2 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services to prevent damage, injury or loss to any affected person or property.

7.3 Contractor shall be solely responsible for pedestrian and vehicular safety within the vicinity of a worksite. Contractor shall provide the necessary warning devices, cones, markers, flags, barricades and other control devices, in addition to ground personnel needed for directing traffic and maintaining safety, protection and warning to all persons and vehicular traffic within the worksite area.

#### **ARTICLE 8 - INDEPENDENT CONTRACTOR**

8.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

**ARTICLE 9 - CONFLICTS OF INTEREST**

9.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on work assigned to the Contractor, except as fully disclosed and approved by the City. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

**ARTICLE 10 - DEFAULT**

10.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within five (5) business days after receiving notice of default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

**ARTICLE 11 - TERMINATION RIGHTS**

11.1 The Parties shall have the right to terminate this Agreement at any time, with or without cause, upon ten (10) days written notice to the other Party. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

**ARTICLE 12 - NOTICES**

12.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

To City: City of North Miami  
Attn: City Manager  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

With a copy to: City Attorney  
City of North Miami  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

12.2 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.

12.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

#### **ARTICLE 13 - PUBLIC RECORDS**

13.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

#### **ARTICLE 14 - INDEMNIFICATION**

14.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

14.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing services under this Agreement. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

14.3 Contractor has visited the worksite and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

14.4 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

#### **ARTICLE 15 - INSURANCE**

15.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage specified in the IFB and provide that the City is an additional named insured, with respect to the required coverage and the operations of the Contractor

under this Agreement. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any Subcontractor to begin work until after similar minimum insurance to cover Subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

15.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

#### **ARTICLE 16 - FORCE MAJEURE**

16.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

#### **ARTICLE 17 - MISCELLANEOUS PROVISIONS**

17.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

17.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

17.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining

terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

17.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

17.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

17.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

17.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

17.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

17.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

17.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

17.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

17.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

17.13 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.

17.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

*(The remainder of this page is intentionally left blank)*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST: \_\_\_\_\_, a  
\_\_\_\_\_ corporation:

Corporate Secretary or Witness: **"Contractor":**

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

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

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

ATTEST: City of North Miami, a Florida municipal  
corporation: **"City"**

By: \_\_\_\_\_  
Michael A. Etienne, Esq.  
City Clerk

By: \_\_\_\_\_  
Russell Benford  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
V. Lynn Whitfield  
City Attorney