

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(Workers' Compensation Third Party Administrator Services)
(RFP No. 45-19-20)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into on 4/2/2021, between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **Johns Eastern Company, Inc.**, a Florida corporation registered and existing under the laws of the State of Florida, having its principal business office at 6015 Resource Lane, Lakewood Ranch, FL 34211 (referred to herein as "Contractor" or "Claims Administrator"). The City and Contractor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, the City of North Miami ("City") is desirous of obtaining a qualified, experienced and licensed Third Party Administrator to provide Workers' Compensation Claims adjustment and related services to the City Risk Management Division for the City's partially-insured Workers' Compensation Program, in accordance with Chapter 440, Florida Statutes (2014), and the City's *Request for Proposal No. 45-19-20, Workers' Compensation Third Party Administrator Services*; and

WHEREAS, in response to the RFP, Contractor submitted its Proposal which was evaluated by City administration as responsive to the submission requirements, and which demonstrated the capacity, resources, experience and value most advantageous to the City in the procurement of Services; and

WHEREAS, the City Manager finds that entering into this Agreement to attain the required Services from the highest ranked proposer in accordance with the terms, conditions and specifications contained in the Contract Documents, is in the best interest of the City.

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 are incorporated into and made part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 City's *Request for Proposal No. 45-19-20, Workers' Compensation Third Party Administrator Services*, as amended ("RFP"), attached hereto by reference;

2.1.2 Contractor's response to City's RFP ("Proposal"), attached hereto as Exhibit "A";

2.1.3 City Evaluation Committee Ranking Ballot of responses to the RFP, attached hereto as Exhibit “B”;

2.1.4 City Tabulation of responses to the RFP, attached hereto as Exhibit “C”; and

2.1.5 Any additional documents which are required to be submitted by Contractor pursuant to Contract Documents.

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 RFP.

2.2.4 The Proposal.

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

ARTICLE 3 – TERM OF AGREEMENT

3.1 Initial Term. The Initial Term of Agreement shall be a period of three (3) years commencing March, 13, 2021 through March 13, 2024.

3.2 Option to Renew. Following the Initial Term, the City reserves the right to renew this Agreement for an additional two (2) successive one-year Term periods. Renewal shall be based on satisfactory performance of Services (as determined by the City), a finding by the City Manager that the Agreement is in the best interest of the City, and mutual acceptance by the Parties in writing.

3.3 Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion of Services within the agreed Term of Agreement. Failure to achieve timely Services within the time specified shall be regarded as a material breach to this Agreement subject to the appropriate remedies available at law.

3.4 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor’s ability to perform the Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City’s request, 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.

3.5 Minor adjustments to the Term of Agreement which are approved in writing by the City in advance, shall not constitute non-performance by Contractor. Any impact on the Term of Agreement shall be determined and the time schedule for completion of Services will be modified accordingly.

3.6 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City Manager at any time, with or without cause, in accordance with Article 9.

ARTICLE 4 - COMPENSATION

4.1 Contractor shall be paid an amount not to exceed Fifty-Five Thousand Dollars (\$55,000.00) annually for the rendition of Services throughout the entire Initial Term encompassing the period of three (3) years, including all materials, labor, equipment, bonds, insurance coverage, and any charges, fees, or commissions. Fee increases shall not exceed three percent (3%) after the initial term. Allocated Loss Adjustment Expenses (ALAE) are those expenses generated by the individual file which are charged back to the claims file and are in addition to the not to exceed price.

4.2 In the event the Agreement is terminated prior to the completion of the Initial term, Contractor's compensation shall be based on a prorated amount for Services rendered up to the effective date of termination.

4.3 The City shall pay Contractor within forty-five (45) days of receipt of invoice with the total shown to be due on such invoice, provided the City has accepted the Services. The fixed annual fee of Fifty-Five Thousand (\$55,000.00) will be divided equally over twelve (12) months to be paid in equal monthly payments.

4.4 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 thirty (30) days written notice to Contractor.

ARTICLE 5 - SCOPE OF SERVICES (OPTION 1) & CONTRACTOR'S RESPONSIBILITIES

5.1 Contractor shall provide all required labor, supervision, materials, equipment, tools, services and expertise necessary for the complete performance of Workers' Compensation Claims adjustment and related services to the City Risk Management Division for the City's partially self-insured Workers' Compensation Program, adhering to the requirements of Chapter 440, Florida Statutes (2020), and with the terms, conditions and specifications contained in the Contract Documents (collectively referred to herein as "Services").

5.2 Contractor shall render full and prompt cooperation with the City in all aspects of Contractor's Scope of Services as further delineated in the Proposal, including but not limited to:

5.2.1 Assuming the complete handling of all prior claims as well as new claims originating from the effective date of this Agreement. It is required that claims data and any and all

other documentation (open and closed) associated with all current and prior claims be transferred into Claims Administrator's computer information system to ensure future City loss runs will contain a complete history of all claim years. The transfer of all claims data shall be completed no later than March, 12 2021.

5.2.2 Contractor shall review all notices of injury received from the City, investigate, take recorded statements, accept or deny claim (with City's approval) and medically manage claim in accordance with Florida Statutes.

5.2.3 Accept or deny all reported claims for employees' injuries on behalf of the City in accordance with Chapter 440, Florida Statutes (2020).

5.2.4 Contractor shall conduct the required investigations deemed necessary, including scene investigations and claimant contact on all reported claims. Contact with claimants shall be made within 24 hours of the Contractor's receipt of the claim.

5.2.5 Enhanced efforts shall be taken to identify possible fraudulent claims, including recorded statements from injured workers and discussions with witnesses and supervisors.

5.2.6 Employ the services of outside professionals to assist in investigations, claims adjustments, etc. as necessary. Such services may include, but shall not be limited to surveillance, rehabilitation, claim specific medical care providers, attorneys, Independent Medical Examination (IME), Set Aside (MSA) and subject matter experts. The use of outside vendors for such services shall only be with prior written approval by the City. Payment for these services will be made by the Contractor from the City's loss fund as an Allocated Loss Adjustment Expense (ALAE). Strict oversight when using outside vendors is expected with respect to reviewing bills for appropriate charges. Proposers must receive no revenue for these services from outside professionals.

5.2.7 Review and provide reports to the City regarding all medical bills and other services for which a claim is being made for reasonableness and conformity to appropriate medical and surgical fee schedules and network discounts.

5.2.8 Coordinate the medical treatment of all claims by promptly setting appointments and authorizing necessary physician referrals and treatments.

5.2.9 Pursue all possibilities for subrogation, liens, recovery from the State and excess carriers. The City must approve any sum negotiated for recovery of third party liens.

5.2.10 Provide advice to the City and obtain its approval of file-reserves in excess of Twenty-Five Thousand Dollars (\$25,000.00), and all potential claim settlements.

5.2.11 Advise the City when defense attorney assignment is necessary on a file. The City shall approve and designate any assigned counsel. The Claims Administrator shall provide the defense attorney with a complete copy of the file in question when an assignment is made.

5.2.12 Attend all workers' compensation hearings, depositions, and mediations on behalf of the City when required.

5.2.13 Prepare and maintain electronic files as necessary for legal defense of claims and or other litigation (such as actions for subrogation) or other proceedings.

5.2.14 Report to the various excess carriers (based on each carrier's reporting requirements) potential and excess claims. The Claims Administrator shall reimburse the City for any late reporting penalties imposed by the carrier due to failure on the part of the Claims Administrator.

5.2.15 Provide all status reports, as required by the excess carrier(s).

5.2.16 Submit requests to any excess carrier(s) for all payments above each claim's Self-Insured Retention to obtain the proper reimbursement for the City. The reimbursement checks shall be forwarded to the City and the amount recovered shall be entered into the Claims Administrator's claims information system. The claims Administrator shall provide the Risk Management Director, at least semi-annually, with a current report of all claims where excess money is outstanding. Requests should be submitted to excess carrier within forty-five (45) days of payments in excess of the self-insured retention.

5.2.17 The Claims Administrator shall submit all State and Federal required filings, including IRS Form 1099 and all reporting required by the Medicare Secondary Payer provisions. In addition, prepare, maintain and file Unit Statistical Report and any information required by Rating Bureaus and/or appropriate state agencies.

5.2.18 Respond to any records requests in a timely manner.

5.2.19 Prepare and file with the appropriate state agency on behalf of the City, all applications required for the City's continued qualification as a self-insurer.

5.2.20 Prepare, maintain and file all records and reports as may be required by governmental authorities (State or Federal) in the required data format.

5.2.21 Prepare, maintain and file statistical data, records, or reports as required by excess insurers, City's actuary, and the State of Florida in the required data format.

5.2.22 Prepare and provide SSAE16 report for City's auditors.

5.2.23 Coordinate and cooperate with audits associated with the Workers Compensation Program.

5.2.24 Prepare, maintain and file statistical information required by workers' compensation rating bureaus, including EDI and all data required for the promulgation of the City's experience modification and State assessments. (BSI-17 due by August 1st annually).

5.2.25 Prepare and file any other reports as required by the City and the State relating to claims experience, payments, including form DWC-51, Aggregate Defense Attorney Fee Reports, and Public Record Requests.

5.2.26 Comply with all State and Federal requirements including EDI reporting requirements.

5.2.27 Keep City's Risk Management staff informed of any significant regulatory or industry changes affecting the workers' compensation program.

5.2.28 Provide training and continuing education to City staff, at no additional charge, on workers' compensation topics of interest to the City, including but not limited to case law updates, regulatory or rule changes, claims management best practices and medical consumerism updates.

5.2.29 Train Risk Management staff and Workers' Compensation designees on claims process relative to reporting work related injury, including accessing TPA's claims management system (at no additional cost to City).

5.2.30 Participate in training and education provided by City staff and/or consultants to the City, or updates on changes in City policies relating to the workers' compensation program at no additional charge to the City.

5.2.31 Demonstrate experience administering a program of like size and scope.

5.2.32 Conduct a semi-annual file reviews with City's staff on site (or on zoom or other mutually agreeable platform as necessary) at no additional cost. The file reviews shall include, at a minimum, information on the nature of the injury, medical treatment history, current status, expenditure, reserves, exposure information, subrogation/SDTF/excess recovery, and an action plan for case moving forward. Summary report shall be provided for other active/open claims with ongoing medical and payment activity.

5.2.33 Develop and follow appropriate written policies to address employee's request for a second opinion, questions on medical evaluation and grievance. These should be communicated to City's Risk Management staff.

5.2.34 Provide peer review and utilization review as appropriate.

5.2.35 Provide City, at no additional cost, real-time electronic, internet accessible claims file data, including but not limited to adjuster's notes, supervisory notes, nurse's notes, diary items, payment records, reserves and medical bills.

5.2.36 Provide online electronic and/or 24 hour telephonic reporting of employee Notices of Injury with direct access and tracking ability.

5.2.37 Provide access to a provider network with preferred/high quality providers, particularly in key specialties, such as: physical therapy, specialized doctors, hospitals etc.

5.2.38 Provide medical bill review and audit services addressing duplicates, unbundling and up-coding of charges, approval and precertification. Provider bills exceeding \$2,500 shall be audited.

5.2.39 Review and provide reports to the City for all medical bills and other services associated with each claim for reasonableness and conformity to applicable regulations, medical and surgical fee schedules, with application of all network discounts.

5.2.40 Provide prescription benefit management (PBM) services with details on access, utilization review services, coordination of claims data and reporting. Fees for pharmaceuticals or pharmaceutical services shall be reimbursable at fee schedule except where the employer/carrier has contracted for at lower amount. The issue of physician dispensing and high cost of repackaged drugs shall be addressed by Administrator.

5.2.41 Provide full time designated adjuster and case management nurse to service the City's workers' compensation claims. Case Management nurse will provide telephonic services. Field visits on medical claims will be outsourced to a preferred vendor partner as necessary.

5.2.42 Adjuster and nurse assigned to City's accounts shall be appropriately licensed and qualified to manage the City's claims. Furthermore, they should have manageable caseloads that enable them to efficiently perform the required services for the City.

5.2.43 Adjuster must have good working knowledge of F.S.440 and be very pro-active in managing claims, setting appointments, keeping abreast of case updates and informing City promptly following appointments or changes in work status/restriction(s).

5.2.44 Claims Administrator is expected to deliver efficiency in a professional and respectful manner to City employees (including the injured worker) and medical providers. Administrator shall commit to working collaboratively with City to produce a robust, effective program.

5.2.45 The Claims Administrator shall maintain adequate staffing levels with qualified individuals and caseloads that provide the City with a quality cost-effective program.

5.2.46 All claims personnel shall be employees of the Claims Administrator. The use of independent adjusters, subcontractors or temporary adjusters is not acceptable. Adjuster trainees are not acceptable for handling City claims.

5.2.47 The City's loss fund account will be maintained at a Financial Institution chosen by the City. The City will pay all service fees that are normal and customary in this account. All interest earned or service credits generated will accrue to the benefit of the City.

5.2.48 The Claims Administrator shall comply with Florida laws concerning public deposits.

5.2.49 All claims or expense payments shall be made by the Claims Administrator on checks drawn on the City's loss funds account. It is understood and agreed upon that all funds in this account are City funds and shall be returned to the City upon request or at termination of this Agreement.

5.2.50 The Claims Administrator shall be responsible for the monthly reconciliation of the City's loss fund account and shall provide monthly bank statements and a check register to the City, along with an invoice showing the transactions that occurred during the month and the current balance in the account. The reconciliation should show the balance at inception of statement period, deposits, disbursements cleared by date and payee, balance at the close of statement period.

5.2.51 All charges related to these services, with the exception of the Allocated Loss Adjustment Expenses, shall be included in the annual claims administration fee. Any costs associated with programming changes that are necessary to create a report required by the City are the responsibility of the Claims Administrator.

5.2.52 All claims data regardless of medium used is the property of the City and any such data shall be provided to the City by the Claims Administrator upon request or upon termination of this agreement.

5.2.53 The Claims Administrator shall ensure all claims and payment data are included in its loss runs. Historic data from the City's current or previous Claims Administrator's database shall not be purged. Claims data for all open and closed claims shall be transferred.

5.2.54 Loss runs shall be provided on a monthly basis for all open and closed claims (electronically). Excel format is acceptable. Reports shall be sorted by policy year and department/location and shall list each claim separately. Specific summary reports shall also be provided upon request by the City.

5.2.55 Workers' compensation claims involving no payment or no medical treatment are reported by the City for inclusion in the data base as "report only claims" (ROC). These reports shall be maintained by the Claims Administrator, but shall NOT be included in reports to the State on the BSI-17.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of the 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 any portion of Services 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 that it will exert every reasonable and diligent effort to ensure that all labor and services employed by Contractor, including that of its subcontractors (if any), shall be in accordance with the Contract Documents and shall incorporate the requirements set forth by applicable rules, regulations, codes and statutes of federal, state and local government jurisdictions.

5.5 Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of Services under this Agreement. All things not expressly mentioned in this Agreement but necessary in carrying out its intent are required by this Agreement, and Contractor shall perform the same as though they were specifically mentioned, described and delineated herein.

5.6 Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession. Additionally, Services shall be accomplished to the satisfaction of the City Manager or his designee.

5.7 Unless otherwise provided for in the Contract Documents, Contractor warrants that all Services which may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by Contractor at its own cost, whether or not specifically called for.

5.8 Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, subcontractors and their agents and their employees, and other persons performing portions of the Services (if any) on behalf of Contractor.

5.9 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.

5.10 The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

5.11 Contractor accepts, understands and agrees that these provisions of the Agreement constitute a material inducement for the City to enter into this Agreement and that the City has indeed relied on these particular provisions in making its decision to enter into this Agreement with Contractor.

ARTICLE 6 - INDEPENDENT CONTRACTOR

6.1 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 7 - CONFLICTS OF INTEREST

7.1 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.

7.2 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 the Contractor or subcontractors, 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 8 - DEFAULT

8.1 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 9 - CITY'S TERMINATION RIGHTS

9.1 Notwithstanding the Term of Agreement provided in Article 3 above, the City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, by giving Contractor sixty (60) days written notice. 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 10 - NOTICES

10.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: Johns Eastern Company, Inc.
 Attn: C T Corporation System, Registered Agent
 1200 South Pine Island Road
 Plantation, FL 33324

With a copy to: Johns Eastern Company, Inc.
 P.O. Box 110259
 Lakewood Ranch, FL 34221

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

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

10.2 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.

10.3 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 11- OWNERSHIP OF DOCUMENTS

11.1 All documents resulting from the provision of Services under this Agreement shall be deemed the sole property of the City, and the City shall have all rights incident to sole ownership. All such documents shall be provided to the City once the Services are completed. In the event the Agreement is terminated, Contractor agrees to provide the City all documents relating to the Services within ten (10) days from the date the Agreement is terminated.

ARTICLE 12- INDEMNIFICATION

12.1 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.

12.2 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 supplies under a direct or indirect agreement with Contractor. 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.

12.3 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 13 – INSURANCE

13.1 Prior to commencing Services, the Contractor shall submit certificates of insurance evidencing the required minimum coverage under the Contract Documents and specifically providing 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 Services under this Agreement until after Contractor has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

13.2 The City shall be named as an additional insured for claims caused in whole or in part by the negligent acts or omissions of Contractor, its subcontractors, employees or assignees during the term of this Agreement. This provision shall not limit the City's recovery for coverage under Contractor's insurance policy.

13.3 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.

13.4 All insurance policies required of the Contractor shall be written by a company with a Best's rating of A- 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. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and the insurance carrier.

ARTICLE 14 - FORCE MAJEURE

14.1 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 15 - PUBLIC RECORDS

15.1 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 (2020), and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

15.2 The Contractor shall additionally comply with Section 119.0701, Florida Statutes (2014), including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes (2020), or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

15.3 It is further understood between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Contractor pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the City.

15.4 In the event the Agreement is terminated, Contractor agrees to provide the City all such documents within Ten (10) Days from the date the Agreement is terminated. All documents developed by Contractor under this Agreement shall be delivered to the City by the Contractor upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes (2020).

15.5 IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT FMEDRANDA@NORTHMIAMI.FL.GOV , RECORDS CUSTODIAN, CITY OF NORTH MIAMI, 776 N.E. 125 STREET, NORTH MIAMI, FL 33161.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 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.

16.2 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.

16.3 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.

16.4 This Agreement constitutes 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.

16.5 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.

16.6 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.

16.7 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.

16.8 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.

16.9 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.

16.10 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.

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

16.12 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.

16.13 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

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

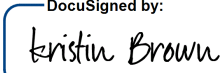
16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[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:

Corporate Secretary or Witness:

By: 
C724AE16618240A...

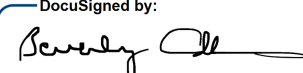
Print Name: Kristin Brown

Title: Manager of Special Account Services

Date: 3/25/2021

Johns Eastern Company, Inc., a Florida for-profit corporation,

“Contractor”:


By: 
4D7B78C4721349C...

Print Name: Beverly Adkins

Title: Executive Vice President


Date: 3/25/2021

ATTEST:

By: 
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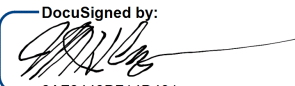
Vanessa Joseph, Esq.
City Clerk

City of North Miami, a Florida municipal corporation, **“City”:**

By: 
FBAE1897923F40D... E0514CC216694D9...

Theresa Therilus, Esq.
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: 
8AF8443D714D491...

Jeff P. H. Cazeau
City Attorney