CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this day of March 14, 2019, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida ("City"), and **Southeastern Seating, Inc.,** a Florida profit corporation registered and authorized to do business under the laws of the State of Florida, having its principal office at 903 E 17th Avenue, Tampa, FL 33605 ("Vendor"). The City and Vendor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, the City has a need for the purchase, demolition and installation of new stadium seating and press box replacement at the North Miami Athletic Stadium ("Services"); and

WHEREAS, based on the City's assessment of Vendor's qualifications, experience and pricing, Vendor was selected to provide the Services defined herein; and

WHEREAS, on February 12, 2019, the Mayor and City Council passed and adopted Resolution No. 2019-R-19, authorizing the City Manager to execute this Agreement for the provision of Services, as beneficial to the health, safety and welfare of all City residents.

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 a part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 Vendor's proposal including Fee Schedule, Warranty and Scope of Services;

2.12 Resolution No. 2019-R-19, passed and adopted by the Mayor and City Council on February 12, 2019, approving Vendor's selection and authorizing the execution of this Agreement;

2.1.3 Any additional documents which are required to be submitted by Vendor under this Agreement.

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:

2.2.2 This Agreement.
2.2.3 The Proposal.

ARTICLE 3 – TIME FOR PERFORMANCE

3.1 Subject to authorized adjustments, the Time for Performance shall not exceed a period of thirty-two (32) weeks following the City's issuance of its Notice to Proceed to Vendor, which shall constitute the guaranteed time upon which Vendor is to complete the Project in accordance with the terms, conditions and specifications contained in this Agreement, unless terminated earlier by the City. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Vendor and the acceptance of Services by the City.

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

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Vendor's ability to perform Services or any portion thereof, the City may request that the Vendor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Vendor's ability to perform in accordance with terms of this Agreement. In the event that the Vendor 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.

3.4 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City at any time, with or without cause.

ARTICLE 4 - COMPENSATION

4.1 The Contractor shall be paid an amount not to exceed Seven Hundred Thousand Ninety-Two Five Hundred Ninety Dollars ($792,590.00) as full compensation for the provision of Services, for the Initial Term.

4.2 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 Vendor.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Vendor agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Contract Documents. Vendor shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession

5.2 Vendor represents and warrants to the City that: (i) Vendor possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Vendor 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 as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Vendor is duly authorized to execute same and fully bind Vendor as a Party to this Agreement.

5.3 Vendor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Vendor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the City, without the prior written consent of the City, which shall be determined by the City in its sole discretion.

5.4 Vendor warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Vendor at its own cost, whether or not specifically called for.

ARTICLE 6 - CITY'S TERMINATION RIGHTS

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

ARTICLE 7 - INDEPENDENT CONTRACTOR

7.1 Vendor, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Vendor shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE 8 - DEFAULT

8.1 In the event the Vendor fails to comply with any provision of this Agreement, the City may declare the Vendor in default by written notification. The City shall have the right to terminate this Agreement if the Vendor fails to cure the default within ten (10) days after receiving notice of default from the City. If the Vendor fails to cure the default, the Vendor will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Vendor shall return such sums due to the City within ten (10) days after notice that such sums are due. The Vendor understands and agrees that termination of this Agreement under this section shall not release Vendor from any obligations accruing prior to the effective date of termination.

9.1 Vendor shall be responsible for deficient conduct and reporting due to Vendor's errors and omissions, and shall promptly correct or replace all such deficiencies without cost to City. The Vendor shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the City for Services performed does not constitute a waiver of this representation.

ARTICLE 10 - INDEMNIFICATION

10.1 Vendor agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Vendor, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by Vendor's negligence within the scope of this Agreement, including all costs, reasonable attorney's fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation.

10.2 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 11 - INSURANCE

11.1 Prior to the execution of this Agreement, the Vendor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured or additional insured with respect to the required coverage and the operations of the Vendor under this Agreement. Vendor shall not commence work under this Agreement until after Vendor has obtained all of the minimum insurance and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Vendor 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, Vendor 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. Vendor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

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

ARTICLE 12 - OWNERSHIP OF DOCUMENTS

12.1 All documents developed by Vendor under this Agreement shall be delivered to the City

restriction or limitation of its use. The Vendor agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes (2017).

12.2 The Vendor shall additionally comply with Section 119.0701, Florida Statutes, 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, 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.

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

12.4 In the event the Agreement is terminated, Vendor agrees to provide the City all such documents within ten (10) days from the date the Agreement is terminated.

ARTICLE 13 - NOTICES

13.1 All notices, demands, correspondence and other communications between the Parties 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 or as the same may be changed from time to time:

For Vendor:
Southeastern Seating, Inc.
Eugene Freeman, Registered Agent
903 E 17th Avenue
Tampa, FL 33605

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

With copy to:
City of North Miami
Attn: City Attorney
776 N.E.125th Street

13.2 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.

13.3 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 14 - CONFLICT OF INTEREST

14.1 Vendor 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.

14.2 Vendor 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 projects assigned to the Vendor, except as fully disclosed and approved by the City. Vendor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 The City reserves the right to audit the records of the Vendor 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.

15.7 The Vendor 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.

15.8 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.

15.9 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.

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

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

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

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

15.14 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.

15.15 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.

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: DocuSigned by: Adam Frazier 623D4F0C058F48D... DS

Print Name: AF

Date: 3/12/2019

Southeastern Seating, Inc., a Florida corporation:
"**Vendor**"

By: DocuSigned by: Jerry Freeman DS 88D8DDB3FC26453...

Print Name JF

Date: 3/13/2019

ATTEST:

By: DocuSigned by: Michael A. Etienne 2C7010872EE3414...
Michael A. Etienne
City Clerk

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

By: DocuSigned by: Larry M. Spring Jr. C23984DEA272ACF...
Larry M. Spring, Jr.
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: DocuSigned by: Jeff P.H Cazeau 8AF3443D714D491...
Jeff P. H. Cazeau
City Attorney