

DRAFT
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT, is made as of this 1st day of March, 2004, between the City of Coral Gables (hereinafter called the "City"), and Gym Kidz Inc. (hereinafter called the "Professional").

RECITALS

WHEREAS, the City wishes to retain a Gymnastics Professional; and

WHEREAS, the City having investigated the qualifications of the Professional to perform the services herein contemplated and found those qualifications satisfactory; and

WHEREAS, the Professional having examined the scope of the services required hereunder and having expressed desire and willingness to provide such services and having presented qualifications to the City in support of those expressed desires; and

WHEREAS, the Professional agrees to accept this Agreement upon the terms and conditions hereinafter set forth; and

WHEREAS, the City Commission has approved the selection of the Professional to perform such services, and the Professional agrees to accept this Agreement upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the City agrees to retain the Professional for a two year period. However, this period may be extended at the sole discretion of the City for three additional one year periods. The Professional agrees to perform all Gymnastics Professional Services in connection with the services described herein.

I. GENERAL PROVISIONS

This Agreement incorporates and supersedes all previous agreements, written and oral, and all prior and contemporaneous communications between the parties, regarding this subject. The City reserves the right to initiate change to any provision of this Agreement. All such changes shall be accomplished only by mutually signed Amendments.

The Professional shall perform the services as specifically stated in the Scope of Services, which is attached hereto and incorporated herein as Exhibit A, and as may be specifically designated and authorized by the City.

Authorizations will be in the form of a Work Authorization. Each Work Authorization will set forth a specific Scope of Services, amount of compensation, a completion date, and shall be approved by the Parks & Recreation Director.

1.1 Engagement. The City agrees to engage the Professional for a period specified in paragraph 1.2, and the Professional agrees to accept such engagement and to perform such services for the City upon the terms, and subject to the conditions forth herein.

1.2 Agreement Period. The terms of the Agreement (the "Professional Period") shall commence on June 1st 2004 and shall continue thereafter for a period of two years with an option to renew for three additional one year periods or until terminated by the City upon 30 days written notice to the Professional, in accordance with the notice requirements contained in Section XII.

1.3 Duties and Responsibilities/Priority of Interpretation. This document without exhibits is referred to as the "Base Agreement". In the event of any conflict of inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, service, or other work, or otherwise, between the Base Agreement and the exhibits, or between exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Base Agreement and the exhibits, or between exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Master Agreement, and then to the exhibits according to the following priority:

- a) City Resolution and applicable Code provisions;
- b) City Request for Proposal;
- c) Professional's (Contractor's) Response to Request for Proposal;
- d) Performance Bond;
- e) Insurance Certificates;
- f) Professional's Exceptions to Terms and Conditions.

During the Professional Period, the Professional will serve as a Professional to the City and shall assist the City as the Gymnastics Professional, and shall perform and oversee those tasks outlined, including, but not limited to:

- g) Gymnastics Professional
Request For Proposal (Exhibit "A")

1.4 Background Investigation. The Professional agrees that all employees including the Professional may be subject to an annual background investigation.

1.5 Polygraph Examination. The Professional agrees to submit to polygraph examinations at the request of the Director or designee.

1.6 Medical, Drug Screening and Check-ups. All Professionals, contractors, their employees, agents and subcontractors must satisfactorily complete the City's pre-placement medical and drug screening examinations and be certified as drug free as well as abide by the City's Drug Free Work Place Policy at contractor's expense. The City may require that the Professional, contractor and/or their employees, agents and subcontractors performing services for the City submit to a yearly medical and drug screen examination, at contractor's expense.

1.7 Drug Testing. The Professional agrees to submit to unannounced drug testing at the request of the Director or designee.

1.8 Driver's License. At City's option, the contractor must provide a valid Florida Driver's License or appropriate commercial driver's license for each employee, agent or subcontractor and be willing and able to operate any required vehicles as authorized by the City. Evidence of compliance with the Defensive Driving Course must be submitted to the City prior to operating a City vehicle or any vehicle where patrons or their children are passengers. Individuals must be approved by the Risk Management Division of the City prior to the operation of a City owned vehicle and/or privately owned vehicles while conducting City business. The City reserves the right to request the employee/agent's driving record from the State of Florida, at Professional's (contractor's) expense.

1.9 Confidential Information. The Professional agrees that any information received by the Professional for the City and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations.

1.10 Most Favored Public Entity. Professional represents that the prices charged to City in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If Professional's prices decline, or should Professional, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the City.

II. PROFESSIONAL SERVICES

2.1 Basic Services. The duties and responsibilities are outlined in Section 1.3.

2.2 Reporting. The Professional shall provide the necessary reporting requirements as outlined by the Director or designee for review. In addition, the Professional shall submit a monthly report to the Director or designee, which shall include detailed information regarding the activities of the Professional during the previous month.

2.3 Availability of Professional. The Professional shall make all documents available 24 hours a day, 7 days a week, 365 days a year, in order to satisfy the City's emergency demands for continued, non-interrupted service.

III. COMPENSATION

3.1 Basic Compensation. In full consideration of the services of the Professional hereunder, the Professional shall be paid at an estimated rate not to exceed sixty-five percent (65%) of the annual gross revenues generated from the day to day operations of the Gymnastics facility at the Youth Center to include all monies received from classes, training sessions, rental agreements, birthday activities, camps and all other gymnastics center related activities, to be paid in monthly increments. The City reserves the right to contract with the Professional for additional services. Any increase in the agreed upon amount shall be approved by the Purchasing Director or designee, and shall be in accordance with applicable City and State regulations.

3.2 Expenses. As part of, and in addition to the basic compensation described in this Agreement, the City shall provide the Professional with no additional compensation for any services performed in fulfilling the requirements of this Agreement. All additional requested expenses must be pre-approved through the Director or designee.

IV. INDEPENDENT CONTRACTOR AND PROFESSIONAL HOLD HARMLESS PROVISIONS

4.1 Independent Contractor and Professional. The Professional acknowledges entering into this Agreement as an independent Contractor and Professional, and that the Professional shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes

or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to Professional's services, or those of employees of the Professional. The City shall not withhold from sums payable to the Professional, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The Professional, their employees or agents, will not be considered an employee of the City or entitled to participate in plans, distributions, arrangements or other benefits extended to the City employees.

4.2 Agency. Nothing herein shall imply or shall be deemed to imply an agency relationship between the City and Professional.

4.2.1 Professional warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. Professional shall indemnify, defend, and hold harmless City, its officers and employees from and against any sanctions and any other liability which may be assessed against Professional or City in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

4.2.2 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security and requirements.

4.3 Indemnification and Hold Harmless. To the fullest extent permitted by Laws and Regulations, the Professional shall indemnify and hold harmless the City and its consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury and (b) is caused in whole or in part by any willful or negligent act or omission of Professional, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

4.4 In any and all claims against the City or any of its consultants, agents, or employees by any employee of Professional, and subconsultant, any

person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Professional or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

V. INSURANCE

5.1 Without limiting Professional's indemnification of the City, and during the term of this Agreement, Professional shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the City and shall be primary to and not contributing with any other insurance maintained by the City. Certificates or other evidence of coverage shall be delivered to:

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: City Manager
Cc: City Attorney
Purchasing Director

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that the City is to be given written notice by certified mail at least thirty (30) days in advance of any modification or termination of insurance.

5.2 The Professional shall maintain during the terms, except as noted, of this Agreement the following insurance:

____a. Professional Liability Insurance in the amount of \$500,000 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the Professional shall become legally obligated to pay as damages for claims arising out of the services performed by the Professional or any person employed in connection with this Agreement. This insurance shall be maintained for three (3) years after any WORK covered by this Agreement.

b. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000 combined single limit per occurrence for bodily injury and property damage, and \$2,000,000. in aggregate. Said policy or policies shall name City as additional insured and shall reflect the hold harmless provision contained herein.

c. Worker's Compensation Insurance for all employees of Professional as required by Florida Statutes Section 440, and employer's liability insurance with limits not less than \$500,000.

d. Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of the work in an amount not less than \$500,000.00 combined single limit per occurrence for bodily injury and property damage.

e. Other (or increased amounts of) insurance which City shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

f. All policies shall contain waiver of subrogation against City where applicable, and shall expressly provide that such policy or policies are primary over any other collective insurance the City may have.

g. All of the above insurance is to be placed with Best-rated A-8 or better insurance companies, qualified to do business under laws of the State of Florida.

h. The City shall be named as additional insured under such policies. Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the City. The City reserves the right to request a copy of required policies for review.

i. All policies shall provide for thirty (30) days notice to City prior to cancellation or material change.

j. The Professional shall furnish Certificates of Insurance to the Employee Relations Department prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the City is named as an additional insured and that the Professional has obtained insurance in the type, amount and classification required for strict compliance with this Section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior notice to the City.

Failure on the part of the Professional to obtain and maintain all required insurance coverage is a material breach upon which the City may, in its sole discretion, immediately suspend Professional's performance or terminate this Agreement.

VI. STANDARD OF CARE

6.1 The Professional shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the Professional shall, at no additional cost to the City, re-perform services which fail to satisfy the foregoing standard of care.

6.2 The Professional warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

VII. NON-DISCRIMINATION

7.1 EEO and ADA: The contractor must be and remain in compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements.

7.2 It is understood that the Professional shall not discriminate against any employee in the performance or the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of age, marital status, race, color, religion, national origin, sex, or disability.

7.3 City Policy Regarding Conduct. All contractors, their employees, agents and subcontractors must abide by the City's policies regarding conduct. Discrimination, harassment, and/or violations of City policies will not be tolerated and are grounds for termination of the contract without harm to the City or its employees.

VIII. CONFLICT OF INTEREST

8.1 The Professional represents that it has provided a list of all current clients subject to the jurisdiction of the City. Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the City. The Professional agrees that it will not enter into any agreements during the term of this Agreement to provide services for any person or corporation who applies for a permit or other development approval from the City. Upon request of the Professional, and full disclosure of the nature and extent of the proposed representation, the City Manager shall have the authority to authorize such representation during the term of this Agreement.

IX. CONFIDENTIALITY

9.1 No reports, information, computer programs, documentation, and/or data given to or prepared or assembled by the Professional under this Agreement shall be made available to any individual or organization by the Professional without prior written approval of the City.

X. OWNERSHIP OF DOCUMENTS

10.1 Any and all documents, records, disks, or other information shall become the property of the City for its use and/or distribution as may be deemed appropriate by the City.

XI. TRUTH-IN-NEGOTIATION CERTIFICATE

11.1 Execution of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

11.2 The said rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The City shall exercise its rights under this "Certificate" within one (1) year following payment.

XII. NOTICE

12.1 Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or three (3) calendar days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as the City of Coral Gables shall be to:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134
Cc: City Attorney

Notice as to Professional shall be to:

Joslyn Pedraja
2225 NE 123rd Street, Apt. 102
Miami, FL 33181

XIII. TERMINATION

13.1 Termination by default. City may, by written notice to Professional, terminate the whole or any part of this Agreement if, in the judgment of the City Manager:

- a) Professional has materially breached any portion of this Agreement;
- b) Professional fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement;
- c) The occurrence of a monetary default which is not cured within ten (10) days following the City's notice of default
- d) Professional has assigned or delegated its duties or subcontracted any performance of this Agreement without prior written consent by the City;
- e) Making changes to the name, structure, control or entity of the Professional's corporate status by way of transferring stock in the amount of five (5) percent or greater, without the prior consent of the City Commission
- f) Insolvency of Professional. Professional shall be deemed insolvent if it has ceased to pay its debts for at least sixty days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Professional is insolvent within the meaning of such laws;
- g) There has been a filing of a voluntary or involuntary petition regarding Professional under the Federal Bankruptcy Code;
- h) There has been the appointment of a Receiver or Trustee for Professional;
- i) There has been an execution by Professional of a general assignment for the benefit of creditors.

If, after City has given notice of termination under the provisions Hereunder, it is determined by City that Professional was not in default under these provisions, or that the default was excusable under these provisions, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 13.2 (Termination for Convenience).

The rights and remedies of City provided in this Paragraph 13.1 are non-exclusive and cumulative.

13.2 Termination for Convenience. This Agreement, may be terminated, when such action is deemed by City to be in its best interest. Termination shall be effected by delivery to Professional of a notice of termination specifying the extent to which performance of Agreement is terminated and the date upon which such termination becomes effective, which shall be no less than ten (10) days after the notice is sent.

After receipt of a notice of termination, Professional shall submit its termination claim and invoice to City, in the form and with any certifications as may be prescribed by City. Such claim and invoice shall be submitted promptly, but not later than three months from the effective date of termination. Upon failure by Professional to submit its termination claim and invoice within the time allowed, City may determine on the basis of the information available to the City, the amount, if any, due to Professional in respect to the termination, and such determination shall be final. When such determination is made, City shall pay Professional the amount so determined.

13.3 Termination by Professional. This Agreement may be terminated by the Professional upon thirty ten (30) days prior written notice to the City in the event of substantial failure by the City to perform in accordance with the terms of the Agreement through no fault of the Professional. It may also be terminated by the City, with or without cause, upon thirty (30) days written notice to the Professional. Unless the Professional is in breach of this Agreement, the Professional shall be paid for services rendered to the City's satisfaction through the date of termination. After receipt of a Termination Notice, and except as otherwise directed by the City, the Professional shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the City.
- D. Continue to complete all parts of the work that have not been terminated.

The Professional shall be paid for services actually rendered to the date of termination.

XIV. UNCONTROLLABLE FORCES

14.1 Neither the City nor Professional shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

14.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

XV. MODIFICATION

15.1 This Agreement may not be amended or modified unless in writing and signed by both parties.

XVI. ASSIGNMENT AND SUBCONTRACTING

16.1 This Agreement and the rights of the Professional and obligations hereunder may not be assigned, delegated or subcontracted by the Professional without the express prior written consent of the City. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which the City may immediately terminate the Agreement in accordance with the provisions of paragraph 13.1 (Termination by Default). The City may assign its rights, together with its obligations hereunder.

XVII. AUDITS

17.1 The Professional shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Professional shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement.

Professional shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Professional agrees that City, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other employment records, and proprietary data and information shall be kept and maintained by Professional and made available to the City during the terms of this Agreement and for a period of three (3) years thereafter unless City's written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by Professional at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at City's option Professional shall pay City for travel, per diem, and other costs incurred by City to examine, audit, excerpt, copy or transcribe such material at such other location. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the Professional's place of business.

In the event that an audit is conducted by Professional specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Professional, then Professional shall file a copy of the audit report with the City's Auditor within thirty (30) days of Professional's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of Professional to comply with the provisions of this Paragraph 17.1 shall constitute a material breach upon which the City may terminate or suspend this Agreement.

17.2 City Audit Settlements. If, at any time during or after the term of this Agreement, representatives of the City conduct an audit of Professional regarding the work performed under this Agreement, and if such audit finds that City's dollar liability for any such work is less than payments made by City to Professional, then the difference shall be either repaid by Professional to City by cash payment upon demand or, at the sole option of City, deducted from any amounts due to Professional from City. If such audit finds that City's dollar liability for such work is more than the payments made by City to Professional, then the difference shall be paid to Professional by cash payment.

XVIII. AVAILABILITY OF FUNDS

18.1 The obligations of the City under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.

XIX. COMPLIANCE WITH LAWS

19.1 In performance of the services, the Professional will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the Professional to obtain and maintain, at no cost to the City, any and all license and permits required to complete the services provided pursuant to this Agreement.

19.2 Conflict of Interest. Professional covenants that no person employed by the Professional which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the City. Professional further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of Professional or its employees must be disclosed in writing to City.

19.3 Professional is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

XX. FEDERAL AND STATE TAXES

20.1 The City is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the City will provide an exemption certificate to the Professional. The Professional shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the City, nor shall the Professional be authorized to use the City's Tax Exemption Number in securing such materials.

XXI. SUCCESSORS AND ASSIGNS

21.1 The City and the Professional each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. The Professional shall not assign this Agreement without the express written approval of the City via executed amendment.

XXII. CONTINGENT FEES

22.1 The Professional warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Professional, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Professional, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

XXIII. ENTIRETY OF AGREEMENT

23.1 The City and the Professional agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the City and the Professional pertaining to the services, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

The following documents are made an integral part of this Agreement:

- A. Request for Proposal;
- B. Insurance Certificates;
- C. Response to Request for Proposal of Professional.

XXIV. COUNTERPARTS

24.1 This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

XXV. WAIVER

25.1 A waiver by either the City or the Professional of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a

default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

XXVI. SEVERABILITY, SURVIVAL

26.1 If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

XXVII. GOVERNING LAW AND VENUE

27.1 The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.

27.2 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.3 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

XXVIII. TIME IS OF THE ESSENCE

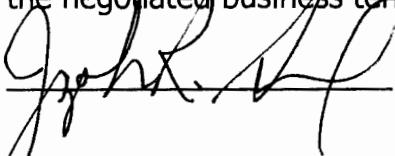
28.1 Time is of the Essence. If any anticipated or actual delays arise, Professional shall immediately so notify the City. Regardless of notice if services or deliveries are not made at the time agreed upon, the City may, at its sole discretion, terminate this Agreement and proceed pursuant to Paragraph 13.1(Termination by Default).

XXIX. HEADINGS

28.1 The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

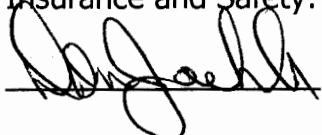
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Approved by
Department Head or head of
Negotiations team as to
the negotiated business terms



Approved by
Procurement Director
As to compliance with
Procurement Code

Approved by
Insurance and Safety:



AS TO CITY:


David L. Brown
City Manager

ATTEST:

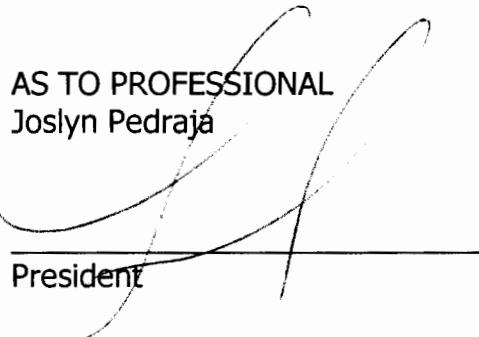
Walter Foeman
City Clerk

APPROVED AS TO FORM


Elizabeth M. Hernandez
City Attorney

ATTEST:

AS TO PROFESSIONAL
Joslyn Pedraja

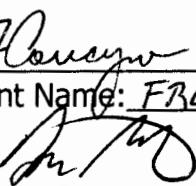

President

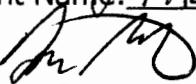
Corporate Secretary

(SEAL)

(OR)

WITNESSES:


Print Name: FRED Covcey Jr.


Print Name: Don Beck

PREPARED BY: ELIZABETH M. HERNANDEZ, CITY ATTORNEY
405 BILTMORE WAY, CORAL GABLES, FL 33134