

PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. PSA 2022-033
DOWNTOWN WORKS/ANNUAL SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), is made as of this ____ day of _____, 2022, between the City of Coral Gables (hereinafter called the "CITY"), and DOWNTOWN WORKS, (hereinafter called the "CONTRACTOR").

In accordance with Resolution No. 2022- _____, and in consideration of the promises and the mutual covenants herein contained, the CITY agrees to retain the CONTRACTOR for the term specified herein.

1. **Services.** The CONTRACTOR agrees to perform as an independent contractor to provide retail consulting services as will be more specifically set forth in work orders issued by the City hereto (the "Services").

a. **Changes in Services.** This Agreement cannot be modified except by written Change order (issued on CITY'S form) signed by both parties, and CONTRACTOR shall not rely on any alleged verbal or written statement to the contrary. If the CONTRACTOR believes it is entitled to additional compensation or additional time to perform its Services, CONTRACTOR shall notify CITY of such claim within twenty one (21) days of the event giving rise to the claim, or it shall be deemed waived by the CONTRACTOR .

b. **Subcontractors/Assignment.** If CONTRACTOR desires to utilize the services of subcontractors or other third parties not identified in the Scope of Services attached as Exhibit A, such persons or parties must be approved in advance by the CITY. The CITY agrees to provide such approval, to be determined by the CITY, within fourteen (14) days of the CONTRACTOR'S request. All agreements entered into with subcontractors by CONTRACTOR shall contain a provision binding the subcontractor to the terms of this Agreement. The duties and obligations of the CONTRACTOR under this Agreement may not be delegated to any other person or party, and the rights and privileges of CONTRACTOR under this Agreement may not be assigned to any other person or party. It is understood that a sale of the majority of the stock or partnership shares of the CONTRACTOR, a merger, bulk sale, or an assignment for the benefit of creditors, shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior CITY approval. Notwithstanding anything to the contrary herein, any transfer, pledge, sale, assignment, or delegation 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. The CITY may assign its rights, together with its obligations hereunder.

2. **Term.** This Agreement shall be for an initial term of one (1) year, commencing on October 1, 2022 and renewable for an additional two (2) one (1)-year terms at the City's sole discretion.

3. **Schedule.** Time is of the essence of this Agreement. CONTRACTOR agrees to perform the Services in accordance with a schedule reasonably established by CITY after consultation with CONTRACTOR and agreed to in writing by the parties.

4. **Payment.** The City shall issue a work order setting forth the specific scope of services and deliverables to be completed by the Contractor and setting forth specific payment terms, including a schedule of payments. CONTRACTOR shall be paid in a sum not to exceed \$15,000 annually, upon

satisfactory completion of and acceptance by the CITY of the Services and in accordance with the agreed-upon payment schedule. There shall be no additional reimbursable expenses.

5. **Independent Contractor.** The CONTRACTOR acknowledges entering into this Agreement as an independent contractor, and the CONTRACTOR 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 CONTRACTOR'S services, or those of employees of the CONTRACTOR. The CITY shall not withhold from sums payable to the CONTRACTOR, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The CONTRACTOR, its employees or agents, will not be considered as employees of the CITY or entitled to participate in plans, distributions, arrangements or other benefits extended to the CITY employees. The CONTRACTOR is an independent contractor. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. Nothing herein shall imply or shall be deemed to imply an agency relationship between the CITY and CONTRACTOR. The CONTRACTOR has no authority to bind the CITY to any promise, debt, default, or undertaking. The CONTRACTOR and the CITY agree that it is not intended that any provision of the Agreement establish a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

6. **Indemnification and Hold Harmless.** Indemnification and Hold Harmless. To the fullest extent permitted by laws and regulations, CONTRACTOR shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, CONTRACTORS, 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 and caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of CONTRACTOR, any subCONTRACTOR, 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 and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and CONTRACTOR's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when CONTRACTOR (or any subCONTRACTOR or any person or organization directly or indirectly employed by CONTRACTOR) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of CONTRACTOR to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject CONTRACTOR to debarment from consideration for future award of city contracts pursuant to Section 2-912(4) of the City of Coral Gables Code of Ordinances. This provision shall survive termination of the Agreement.

In any and all claims against the City or any of its elected and appointed officials, attorneys, administrators, CONTRACTORS, agents, or employees by any employee of CONTRACTOR, any subCONTRACTOR, 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 CONTRACTOR or any such subCONTRACTOR or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

7. **Insurance.** Pursuant to the City of Coral Gables Code, Section 2-971, the Risk Management Division of the Labor Relations Department has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public. Consequently, prior to commencing work, the CONTRACTOR shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The CONTRACTOR shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of the Office of Labor Relations and Risk Management for review and approval.

INSURER REQUIREMENTS

The CONTRACTOR shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT

Workers' Compensation and Employers Liability Insurance (this requirement is waived if the Contractor has less than 4 employees) covering all employees, subcontractors, and/or volunteers of the CONTRACTOR and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B
\$500,000 Limit - Each Accident
\$500,000 Limit - Disease each Employee
\$500,000 Limit - Disease Policy Limit

Commercial General Liability Insurance written on an occurrence basis, including but not limited to, coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000
Fire Damage Limit (Damage to rented premises) - \$100,000
Personal & Advertising Injury Limit - \$1,000,000
General Aggregate Limit - \$2,000,000
Products & Completed Operations Aggregate Limit - \$2,000,000

Business Automobile Liability Insurance (this requirement is waived if the Contractor does not have company-owned vehicles) covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

Uninsured and Underinsured motorist coverage with limits of not less than \$100,000 per accident

MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):

Workers Compensation

The standard form approved by the State of Jurisdiction

Commercial General Liability

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable except for professional or environmental liability coverage.

Commercial Auto Liability

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

REQUIRED ENDORSEMENTS

In addition to being stated on the Certificate of Insurance, the following endorsements with City approved language

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance and Professional Liability)

Waiver of Subrogation for all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES
INSURANCE COMPLIANCE
P.O. Box 100085 – CE

All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.

HOW TO EVIDENCE COVERAGE TO THE CITY

The following documents must be provided to the City;

A Certificate of Insurance containing the following information:

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf.

The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.

The city reserves the right to require additional insurance requirements at any time during the course of the agreement.

WAIVER OF INSURANCE REQUIREMENTS

Should a bidder not be able to comply with any insurance requirement, for any reason, the bidder must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division.

CONTRACTOR is encouraged to review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

All insurance documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to cityofcoralgables@ebix.com and copy to druiz@coralgables.com. Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance
Phone: (951) 652-2883.
Fax: (770) 325-0417
Email: cityofcoralgables@ebix.com

When submitting Professional, Contractor and/or Vendor evidence of insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables
Insurance Compliance
P.O. Box 100085 – CE
Duluth, GA 30096

8. **Standard of Care.** The CONTRACTOR 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 CONTRACTOR shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care. The CONTRACTOR shall be responsible for the quality of all services performed by subCONTRACTORS or other third parties retained by CONTRACTOR. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

9. **Compliance with Applicable Law.** In performance of the services, the CONTRACTOR will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards, including but not limited to, compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements. It shall be the responsibility of the CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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.

10. **Equal Opportunity.** It is understood that the CONTRACTOR 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 race, creed, color, national origin, age, disability, sex, gender identity, sexual orientation, or any other legally protected class. Discrimination, harassment, and/or violations of this clause and City non-discrimination policies will not be tolerated and are grounds for immediate termination of the contract without liability to the CITY or its employees.

11. **Policy Regarding Conduct.** All contractors, including CONTRACTOR, its employees, agents and subcontractors, must abide by the CITY'S policies regarding conduct. Violations of CITY policies will not be tolerated and are grounds for termination of the contract without liability to the CITY or its employees.

12. **Conflict of Interest.** Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the CITY. The CONTRACTOR 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 CONTRACTOR 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.

13. **Confidentiality.** Subject to the requirements of Chapter 119 of the Florida Statutes, the CONTRACTOR agrees that any information received by the CONTRACTOR 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, and that no reports, information, computer programs, documentation, and/or data given to or prepared or assembled by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the CITY.

14. **Ownership of Documents.** All right, title, and interest in and to all work performed under this Agreement, including without limitations all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the CONTRACTOR or sub-CONTRACTORS, shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY; provided that any materials used by the CONTRACTOR and any sub-CONTRACTORS for which a patent or copyright protection has previously been secured by them shall remain the property of the CONTRACTOR or sub-CONTRACTORS. The CONTRACTOR shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the CITY's use.

15. **Notice.** 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 rejected, 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 CONTRACTOR shall be to:

Downtown Works, LLC
521 Stadium PI S
Suite 2316
Seattle, WA 98104
Attn: Midge McCauley
Midge@downtownworks.com

16. **Most Favored Public Entity.** CONTRACTOR 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 CONTRACTOR'S prices decline, or should CONTRACTOR, 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.

17. **Termination.** The CITY may terminate this Agreement without cause at any time by providing written notice to CONTRACTOR, and may terminate this Agreement for cause by providing thirty (30) days written notice to CONTRACTOR. In the event of a termination for cause, due to CONTRACTOR'S failure to perform in accordance with the terms of this Agreement, CONTRACTOR shall be paid any sums otherwise due and owing under this Agreement only after CITY has completed the work called for by this Agreement with other forces, and has deducted the cost of such work, and any other damages payable to CITY, from any contract balance otherwise due and owing to CONTRACTOR under this Agreement. In the event of a termination for convenience, the CONTRACTOR shall be paid for all services performed through the date of termination, based on the percentage of services completed (subject to applicable setoff rights), and CONTRACTOR shall not be entitled to any other compensation or damages from CITY. If, after notice of termination for cause, it is determined for any reason that the CONTRACTOR was not in default, the rights and obligations of the CITY and CONTRACTOR shall be the same as though the termination had been a termination for convenience. In no event shall the CITY be liable to the CONTRACTOR for lost profits on any work not performed, overhead, or any other type of consequential, special or indirect damages, and CONTRACTOR hereby waives same. The CONTRACTOR may terminate this Agreement due to the CITY'S failure to comply with the material terms of this Agreement after giving CITY thirty (30) days' notice of its default and an opportunity to cure. Upon termination of this Agreement, all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the CONTRACTOR or sub-CONTRACTORS, whether finished or not, shall become CITY property. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by the CONTRACTOR until all documentation is delivered to the CITY.

18. **Waiver of Consequential Damages.** CONTRACTOR waives claims against the CITY for consequential damages arising out of or related to this Agreement or its performance including, but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any work not performed by CONTRACTOR.

19. **Sovereign Immunity.** CONTRACTOR acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by CONTRACTOR against the CITY other than claims arising out of this Agreement. Specifically, the CONTRACTOR acknowledges that it cannot and will not assert any claims against the CITY, unless the claim is based upon a breach by the CITY of this Agreement. Further, the CONTRACTOR recognizes the CITY is a sovereign with regulatory authority that it exercises for the health, safety, and welfare of the public. This Agreement in no way estops or affects the CITY's exercise of that regulatory authority. In addition, the CITY retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The CONTRACTOR acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the CITY of implied warranties or representations not specifically set forth in this Agreement, as the parties

- stipulate that there are no such implied warranties or representations of the CITY. All obligations of the CITY are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
 - c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, CONTRACTORS, agents, or any CITY employee;
 - d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the CITY and CONTRACTOR.

20. **Force Majeure.** Neither the CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Force Majeure" 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, but shall not include financial inability of the CONTRACTOR. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by a Force Majeure, give written notice to the other party describing the circumstances and Force Majeure preventing continued performance of the obligations of this Agreement.

21. **Financial records.** The CONTRACTOR shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. CONTRACTOR 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. CONTRACTOR 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 during normal business hours. All such materials shall be maintained by CONTRACTOR 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 CONTRACTOR 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. In the event that an audit is conducted by CONTRACTOR specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by CONTRACTOR, then CONTRACTOR shall file a copy of the audit report with the CITY'S Auditor within thirty (30) days of CONTRACTOR'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).

22. **Miscellaneous.**

- a. **Modification.** This agreement may not be amended or modified unless in writing and signed by both parties.
- b. **Availability of funds.** The obligations of the CITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.
- c. **Conflict of Interest.** CONTRACTOR covenants that no person employed by the CONTRACTOR which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the CITY. CONTRACTOR 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 CONTRACTOR or its employees must be disclosed in

writing to CITY. CONTRACTOR 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.

- d. **Background check/Drug and Alcohol Policy.** CONTRACTOR agrees that all of its employees performing work on CITY property may be subject, at the CITY's discretion, to an annual "Level 2" background investigation in accordance with Chapter 435.04 of the Florida Statutes. If the CITY in its discretion determines that a specific employee of the CONTRACTOR should not perform work on CITY property, the CONTRACTOR will ensure that such employee does not perform work on CITY property. CONTRACTOR agrees to comply with the CITY's drug and alcohol policy. The CITY may waive all or part of this subsection d., in its discretion.
- e. **Federal and State taxes.** The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the CITY, nor shall the CONTRACTOR be authorized to use the CITY'S Tax Exemption Number in securing such materials.
- f. **Entirety of agreement.** The CITY and the CONTRACTOR agree that this Agreement, as amended from time to time, 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, written or oral, between the CITY and the CONTRACTOR pertaining to the services. 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.
- g. **Counterparts.** 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.
- h. **Waiver.** A waiver by either the CITY or the CONTRACTOR 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.
- i. **Severability.** 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.
- j. **Governing law and venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. 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.
- k. **Joint preparation.** Preparation of this Agreement has been a joint effort of the CITY and the CONTRACTOR and the resulting document shall not, solely as a

matter of judicial construction, be construed more severely against one of the parties than any other.

- l. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.
- m. **Public Records Law, Florida Statutes Chapter 119.** Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. CONTRACTOR acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. CONTRACTOR also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, CONTRACTOR agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

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

Approved as to insurance:

AS TO CITY:

David Ruiz
Risk Management Division

Celeste S. Walker-Harmon
Chief Procurement Officer

Approved by
Department Director

Belkys Perez
Economic Development

ATTEST:

Billy Y. Urquia
City Clerk

Approved as to compliance with
applicable procurement requirements:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Celeste S. Walker-Harmon
Chief Procurement Officer

Miriam Soler Ramos
City Attorney

Approved as to funds appropriation:

Diana M. Gomez
Finance Director

ATTEST:

AS TO CONTRACTOR:

Corporate Secretary
Print Name: _____
(SEAL)

President
Print Name: _____

(OR)
WITNESSES (2):

Print Name: _____

Print Name: _____