

AGREEMENT

Between

BROWARD COUNTY

and

for

RLI # _____

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Between

BROWARD COUNTY

and

for

RLI # _____

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

_____, a Florida corporation, hereinafter referred to as "SECOND PARTY."

WHEREAS, set the foundation for authority, etc.>

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and SECOND PARTY agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - means this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.

- 1.3 **Contract Administrator** - The Broward County Administrator, the Director of the Broward County _____ Division, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with SECOND PARTY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **County Administrator** – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 **Community Disadvantaged Business Enterprise or "CDBE"** - is a business located in Broward County, Florida, that is owned by an economically disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not economically disadvantaged. To qualify as a CDBE business, a firm must meet the criteria and eligibility requirements of Broward County's CDBE Program and must be certified by Broward County's Small Business Development Division.
- 1.7 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 SECOND PARTY shall perform all work identified in this Agreement and Exhibit "A." The parties agree that the scope of services is a description of SECOND PARTY's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by SECOND PARTY impractical, illogical, or unconscionable.
- 2.2 SECOND PARTY acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

- 2.3 SECOND PARTY shall pay its subcontractors and suppliers, including its CDBE subcontractors and suppliers, within thirty (30) days following receipt of payment from the COUNTY for such subcontracted work or supplies. SECOND PARTY agrees that if it withholds an amount as retainage from such subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on _____; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.
- 3.2 All duties, obligations, and responsibilities of SECOND PARTY required by this Agreement shall be completed no later than _____. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

ARTICLE 4

COMPENSATION

- 4.1 COUNTY agrees to pay SECOND PARTY, in the manner specified in Section 4.2, the total amount of _____ Dollars (\$_____) for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by SECOND PARTY as full compensation for all such work. It is acknowledged and agreed by SECOND PARTY that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate SECOND PARTY for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon SECOND PARTY's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. No amount shall be paid to SECOND PARTY to reimburse its expenses.

4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 SECOND PARTY may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices

are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred. SECOND PARTY shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "F"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and suppliers listed in item 2 of the form, explaining the good cause why payment has not been made.

4.2.2 COUNTY shall pay SECOND PARTY within thirty (30) calendar days of receipt of SECOND PARTY's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of SECOND PARTY to comply with a term, condition, or requirement of this Agreement.

4.3 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by COUNTY.

4.4 Payment shall be made to SECOND PARTY at:

ARTICLE 5

INDEMNIFICATION

SECOND PARTY shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, SECOND PARTY, its employees, agents, servants, or officers, or accruing,

resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, SECOND PARTY shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due SECOND PARTY under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 6

INSURANCE

- 6.1 To ensure the indemnification obligation contained above, SECOND PARTY shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Sections 6.3, 6.4, 6.5, and 6.6, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.
- 6.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. SECOND PARTY shall pay all deductible amounts, if any. SECOND PARTY shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds under the Commercial Liability Policy as well as on any Excess Liability Policy coverage. The official title of the certificate holder is Broward County Board of County Commissioners. This official title shall be used in all insurance documentation.
- 6.3 Professional Liability Insurance. A Professional Liability Insurance Policy shall be provided which shall contain minimum limits of _____ (\$_____) for each claim. Any deductible amount shall not exceed _____ (\$_____) for each occurrence. **SECOND PARTY shall notify COUNTY in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance Policy.**

6.4 Commercial Liability Insurance. A Commercial Liability Insurance Policy shall be provided which shall contain minimum limits of _____ Dollars (\$_____) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of _____ Dollars (\$_____) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations.

Independent contractors.

Products and/or Completed Operations for contracts.

Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

6.5 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of _____ Dollars (\$_____) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.

Hired and Non-Owned Vehicles, if applicable.

Employers' Non-Ownership, if applicable.

6.6 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of _____ Dollars (\$_____) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

- 6.7 SECOND PARTY shall furnish to the COUNTY's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified by this Article within fifteen (15) calendar days after notification of award of the Agreement and attached hereto as Exhibit _____. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The Certificate of Insurance shall be in form similar to and contain the information set forth in Form 00708, to be provided by the COUNTY's Risk Management Division. SECOND PARTY's failure to provide to COUNTY the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.
- 6.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of SECOND PARTY is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 6.9 COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If SECOND PARTY uses a subcontractor, the SECOND PARTY shall ensure that subcontractor names COUNTY as an additional insured.

ARTICLE 7

TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by the COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator

determines that termination is necessary to protect the public health or safety. The parties agree that if the COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, SECOND PARTY's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may also be terminated by the Board:
- 7.2.1 Upon the disqualification of SECOND PARTY as a CDBE by COUNTY's Director of Small Business Development Division if SECOND PARTY's status as a CDBE was a factor in the award of this Agreement and such status was misrepresented by SECOND PARTY;
 - 7.2.2 Upon the disqualification of SECOND PARTY by COUNTY's Director of Small Business Development Division due to fraud, misrepresentation, or material misstatement by SECOND PARTY in the course of obtaining this Agreement or attempting to meet the CDBE contractual obligations;
 - 7.2.3 Upon the disqualification of one or more of SECOND PARTY's CDBE participants by COUNTY's Director of Small Business Development Division if any such participant's status as a CDBE firm was a factor in the award of this Agreement and such status was misrepresented by SECOND PARTY or such participant;
 - 7.2.4 Upon the disqualification of one or more of SECOND PARTY's CDBE participants by COUNTY's Director of Small Business Development Division if such CDBE participant attempted to meet its CDBE contractual obligations through fraud, misrepresentation, or material misstatement; or
 - 7.2.5 If SECOND PARTY is determined by COUNTY's Director of Small Business Development Division to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CDBE status of its disqualified CDBE participant.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

7.4 In the event this Agreement is terminated for convenience, SECOND PARTY shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. SECOND PARTY acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by SECOND PARTY, for COUNTY's right to terminate this Agreement for convenience.

7.5 In the event this Agreement is terminated for any reason, any amounts due SECOND PARTY shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

ARTICLE 8

EEO and CDBE COMPLIANCE

8.1 EEO COMPLIANCE

SECOND PARTY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. SECOND PARTY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

SECOND PARTY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. SECOND PARTY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, SECOND PARTY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, SECOND PARTY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from SECOND PARTY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

8.2 CDBE COMPLIANCE

8.2.1 The CDBE Program, which is implemented under COUNTY's Community Disadvantaged Business Enterprise Act of 2007 (Broward County Ordinance No. 2007-32, as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CDBE participation goals, initiatives, and other opportunities for COUNTY contracts. In completing this Project, SECOND PARTY agrees to and shall comply with the CDBE Program. Failure by SECOND PARTY to carry out any of the CDBE Program requirements shall constitute a material breach of this Agreement, which shall permit COUNTY to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative. SECOND PARTY acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CDBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to SECOND PARTY and shall include a deadline for SECOND PARTY to notify COUNTY if SECOND PARTY concludes that the modification exceeds the authority of this section of this Agreement. Failure of SECOND PARTY to timely notify COUNTY of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by SECOND PARTY.

The COUNTY, acting by and through its Small Business Development Division, shall have the right to review each proposed amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial Agreement price by ten percent (10%) or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of CDBE firms already involved in this Agreement. SECOND PARTY shall make a good faith effort to include CDBE firms in work resulting from any such amendment, extension,

modification, or change order and shall report such efforts, along with evidence thereof, to the Small Business Development Division.

8.2.2 COUNTY and SECOND PARTY agree that subcontract awards to CDBE firms are crucial to the achievement of the Project's CDBE participation goal. SECOND PARTY understands that each CDBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Small Business Development Division. In an effort to assist COUNTY in achieving its established goal for this Project, SECOND PARTY agrees to meet the following CDBE participation goal by utilizing the CDBE firms for the work and dollar values described in Subsection 8.2.3:

Total CDBE Goal	%
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SECOND PARTY shall inform COUNTY immediately when a CDBE firm is not able to perform or if SECOND PARTY believes the CDBE firm should be replaced for any other reason, so that the Small Business Development Division may review and verify the good faith efforts of SECOND PARTY to substitute the CDBE firm with another CDBE firm. Whenever a CDBE firm is terminated, SECOND PARTY shall make good faith efforts to find another CDBE firm to perform the work required of the original CDBE firm.

8.2.3 In performing services for this Project, COUNTY and SECOND PARTY hereby incorporate SECOND PARTY's participating CDBE firms, addresses, scope of work, and dollar value identified on the Schedule of CDBE Participation into this Agreement (Exhibit "D"). Upon execution of this Agreement by COUNTY, SECOND PARTY shall enter into a formal contract with the CDBE firms SECOND PARTY selected to fulfill the CDBE participation goal for this Agreement and agrees to provide copies of its contracts with such firms to the Contract Administrator and the Broward County Small Business Development Division. SECOND PARTY shall not terminate a CDBE firm listed on the Schedule of Participation without cause unless SECOND PARTY has received COUNTY's prior written consent. SECOND PARTY understands that each replacement CDBE firm utilized on the Project to meet the participation goal must also be certified by the Broward County Small Business Development Division.

8.2.4 SECOND PARTY shall allow COUNTY to engage in on-site reviews to monitor SECOND PARTY's progress in achieving and maintaining its contractual and CDBE Program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the Small Business Development Division. COUNTY shall have access, without limitation, to SECOND PARTY's books and records, including payroll records, tax returns and records, and books of account, on five (5)

business days notice, to allow COUNTY to determine SECOND PARTY's compliance with its commitment to the CDBE participation goal and the status of any CDBE firm performing any portion of this Agreement.

8.2.5 SECOND PARTY understands that it is the responsibility of the Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the CDBE requirements. In that regard, SECOND PARTY agrees to furnish monthly reports regarding compliance with its CDBE obligations to the Contract Administrator with its partial pay requests under Section 4.2 of this Agreement, which report shall, as a minimum, include all expenditures made to achieve compliance with its assigned goal or other contractual conditions agreed to by SECOND PARTY, the name and business address of each CDBE firm participating in this Agreement; a description of the work performed and/or product or service supplied by each CDBE firm; the date and amount of each expenditure; and any other information requested by COUNTY's representative which may assist COUNTY in determining SECOND PARTY's compliance with its contractual obligations, or which may assist in the implementation and enforcement of the Act. The submission of the report required by this subsection shall be a condition of payment to SECOND PARTY. The monthly reports shall be submitted on a form which may be obtained at the Small Business Development Division. The first report shall be due at the end of the first month of this Agreement.

8.2.6 In the event of SECOND PARTY's noncompliance with its participation commitment to a CDBE firm (including without limitation the unexcused reduction of the CDBE firm's participation), the affected CDBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CDBE firm, and alleged to be due to the willful action or omission of SECOND PARTY:

8.2.6.1 The affected CDBE firm shall be entitled to damages pursuant to its agreement with SECOND PARTY.

8.2.6.2 If the CDBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by SECOND PARTY, then in such event the CDBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between SECOND PARTY and COUNTY; nor shall COUNTY incur any cost, fee, or liability relative to any arbitration proceeding.

8.2.6.3 Nothing under this Subsection 8.2.6 shall be construed to limit the rights of and remedies available to COUNTY, including the right to seek its own damages pursuant to this Agreement.

8.2.7 SECOND PARTY agrees that nonpayment of a CDBE subcontractor or CDBE supplier as required by Section 2.3 of this Agreement shall be a material breach of this Agreement and that COUNTY's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until SECOND PARTY demonstrates timely payments of sums due to such subcontractors or suppliers. SECOND PARTY agrees that the presence of a "pay when paid" provision in its contract with a CDBE firm shall not preclude COUNTY or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Subsection 8.2.7 shall not be employed when SECOND PARTY demonstrates that failure to pay results from a bona fide dispute with its CDBE subcontractor or supplier.

8.2.8 If SECOND PARTY fails to comply with the requirements of this Agreement, COUNTY shall have the right to exercise any administrative remedies provided by the Act, or any other right or remedy provided in this Agreement or under applicable law.

ARTICLE 9

MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY; and, if a copyright is claimed, SECOND PARTY grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by SECOND PARTY, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by SECOND PARTY to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to SECOND PARTY shall be withheld until all documents are received as provided herein.

9.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of SECOND PARTY and its subcontractors that are related to this Project. SECOND PARTY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of SECOND PARTY and

its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, SECOND PARTY or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

SECOND PARTY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to SECOND PARTY's and its subcontractors' records, SECOND PARTY and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SECOND PARTY or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

SECOND PARTY shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 9.2.

9.3 PUBLIC ENTITY CRIME ACT

SECOND PARTY represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, SECOND PARTY further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether SECOND PARTY has been placed on the convicted vendor list.

9.4 INDEPENDENT CONTRACTOR

SECOND PARTY is an independent contractor under this Agreement. Services provided by SECOND PARTY pursuant to this Agreement shall be subject to the supervision of SECOND PARTY. In providing such services, neither SECOND PARTY nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to SECOND PARTY or SECOND PARTY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

9.5 THIRD PARTY BENEFICIARIES

Except as provided under Subsection 8.2.6, neither SECOND PARTY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Governmental Center, Room ____
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

FOR SECOND PARTY:

9.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, SECOND PARTY shall not subcontract any portion of the work required by this Agreement, except as provided in Exhibit "D." COUNTY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by SECOND PARTY of this Agreement or any right or interest herein without COUNTY's written consent.

SECOND PARTY represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

SECOND PARTY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of SECOND PARTY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

9.8 CONFLICTS

Neither SECOND PARTY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with SECOND PARTY's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

SECOND PARTY further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or SECOND PARTY is not a party, unless compelled by court process. Further, SECOND PARTY agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude SECOND PARTY or any persons in anyway from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event SECOND PARTY is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, SECOND PARTY agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as SECOND PARTY.

9.9 MATERIALITY AND WAIVER OF BREACH

COUNTY and SECOND PARTY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.10 COMPLIANCE WITH LAWS

SECOND PARTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.11 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or SECOND PARTY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

9.12 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.13 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.14 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

9.15 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and SECOND PARTY or others delegated authority to or otherwise authorized to execute same on their behalf.

9.16 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.17 HIPAA COMPLIANCE

It is expressly understood by the parties that COUNTY personnel and/or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 CFR 164.502 and related regulations. In the event SECOND PARTY is considered by COUNTY to be a covered entity or business associate and/or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (hereinafter known as "HIPAA"), SECOND PARTY shall fully protect individually identifiable health information as required by HIPAA and, if requested by COUNTY, shall execute a Business Associate Agreement in the form attached hereto as Exhibit "E" for the purpose of complying with HIPAA. Where required, SECOND PARTY shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of SECOND PARTY's and COUNTY's uses of client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement. COUNTY hereby authorizes the County Administrator to sign Business Associate Agreements on its behalf.

9.18 PAYABLE INTEREST

9.18.1. Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, COUNTY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof SECOND PARTY waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.18.2. Rate of Interest. In any instance where the prohibition or limitations of Section 9.18.1 are determined to be invalid or unenforceable, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.19 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits _____ are incorporated into and made a part of this Agreement.

9.20 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.21 PREVAILING WAGE REQUIREMENT

If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, SECOND PARTY as a result of this Agreement, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work; and further SECOND PARTY shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibits "B" and "C."

9.22 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and SECOND PARTY, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Office of the County Attorney
for Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
(Date)

By _____
(Date)
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND

_____ FOR _____

SECOND PARTY

WITNESSES:

By _____
_____, President
____ day of _____, 20____

(SEAL)

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

1. Prevailing Wage Rate Ordinance. This Project is not federally funded. If the construction cost is in excess of \$250,000, the following sections shall apply:
 - 1.1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
 - 1.2. All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. SECOND PARTY shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
 - 1.3. If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
 - 1.4. In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by SECOND PARTY, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to SECOND PARTY terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, SECOND PARTY and its sureties shall be liable to COUNTY for any excess costs occasioned to COUNTY thereby.

- 1.5. Sections 1.1 through 1.4 above shall apply to this Agreement to the extent that it is: (1) a prime Agreement subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Agreement.
- 1.6. SECOND PARTY shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
- 1.7. SECOND PARTY shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as Exhibit "C."
- 1.8. The Contract Administrator may withhold or cause to be withheld from SECOND PARTY so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by SECOND PARTY or any subcontractor on the work, the full amount of wages required by this Agreement.
- 1.9. If SECOND PARTY or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to SECOND PARTY, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

EXHIBIT C

STATEMENT OF COMPLIANCE
(PREVAILING WAGE RATE ORDINANCE NO. 83-72)

No. _____

Agreement No. _____

Project Title _____

The undersigned SECOND PARTY hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Broward County Ordinance No. 83-72 and the applicable conditions of this Agreement.

Dated _____, _____,

SECOND PARTY

By _____
(Signature)

By _____
(Name and Title)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this ____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

(Title or rank)

(Serial number, if any)

My commission expires:

EXHIBIT D

SCHEDULE OF CDBE PARTICIPATION

SECOND PARTY agrees that the CDBE participants listed below have agreed by written subcontract to perform the work for the dollar value set forth and that the following information regarding participating Subcontractors is true and correct to the best of his/her knowledge:

(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)

PLEASE ATTACH ADDITIONAL INFORMATION IF NECESSARY.

EXHIBIT E

**BUSINESS ASSOCIATE ADDENDUM TO AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA
AND
[INSERT COMPANY NAME HERE]
FOR
[INSERT AGREEMENT DESCRIPTION]**

This BUSINESS ASSOCIATE ADDENDUM amends the following Agreement by and between Broward County, Florida (hereinafter called "County"), and [INSERT COMPANY NAME HERE] (hereinafter called "Business Associate"), [INSERT COMPANY ADDRESS HERE], for [INSERT AGREEMENT DESCRIPTION HERE]:

[Date of original contract and date of most recent amendment], [hereinafter the "Existing Agreement."]

IN CONJUNCTION WITH the Existing Agreement, this Business Associate Addendum is made and entered into by and between the County and the Business Associate.

WHEREAS, the County and the Business Associate have previously entered into an Agreement related to the operation of certain activities related to the provision of health care;

WHEREAS, the operation of such programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA);

WHEREAS, the requirements of HIPAA mandate that certain responsibilities of contractors with access to Protected Health Information as defined under HIPAA must be documented through a written agreement;

WHEREAS, the County and the Business Associate desire to comply with the requirements of HIPAA and acknowledge respective responsibilities;

NOW, THEREFORE, the parties enter into this Business Associate Addendum for the consideration set out below, all of which is deemed to be good and sufficient consideration in order to make this Business Associate Addendum a binding legal instrument.

Section 1: Definitions.

All terms used in this Addendum not otherwise defined shall have the meaning as those terms in 45 CFR ' 164 [hereinafter called, the "HIPAA Privacy Rule"].

Section 2: Obligations and Activities of the Business Associate.

- 2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this special agreement or as required by law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as permitted or required by this Addendum or as required by law.
- 2.3 Business Associate agrees to mitigate, to the extent possible, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.
- 2.4 Business Associate agrees to report to the County any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware.
- 2.5 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from the County or created or received on behalf of the County by the Business Associate, agrees to the same restrictions and conditions that apply through this Addendum to the Business Associate with respect to such information.
- 2.6 Business Associate agrees to provide access to the County to all Protected Health Information in Designated Record Sets in a timely manner in order to meet the requirements under 45 CFR ' 164.524.
- 2.7 Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set as directed or agreed to by the County pursuant to 45 CFR ' 164.526 in a timely manner.
- 2.8 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the County or created or received on behalf of the County available to the County or to the Secretary of Health and Human Services or designee within five business days for the purposes of determining the Business Associate's compliance with the Privacy Rule.
- 2.9 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for

the County to respond to an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR ' 164.528.

- 2.10 Business Associate agrees to provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR ' 164.528.

Section 3: Permitted Uses and Disclosures.

- 3.1 Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the County as specified in the Existing Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County that are communicated to the Business Associate in writing.
- 3.2 Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information to provide Data Aggregation services to the County as permitted by 42 CFR ' 164.504 (e)(2)(i)(B).
- 3.4 Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 CFR ' 164.504 (j)(1).

Section 4: Obligations of the County.

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR ' 164.520, to the extent that such limitation may affect Business Associate's use of Protected Health Information.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use of Protected Health Information.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which the County has agreed in accordance with 45 CFR ' 164.522, to the extent that such changes may affect Business Associate's use of Protected Health Information.

4.4 The County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County.

Section 5: Term.

The term of this Addendum shall be effective upon execution by all parties, and shall terminate when all of the Protected Health Information provided by the County or contractors for the County, or created or received by the Business Associate on behalf of the County, is destroyed, turned over to the County, or turned over to Contractors designated by the County.

Section 6: Amendment.

The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

BUSINESS ASSOCIATE ADDENDUM TO AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA AND _____ for _____

WHEREAS, the parties have made and executed this Business Associate Addendum to Agreement between COUNTY and _____ for _____, on the respective dates under each signature: Broward County through its County Administrator, authorized to execute same, and _____, duly authorized to execute same on behalf of _____.

COUNTY

BROWARD COUNTY

WITNESSES:

By: _____
_____, County Administrator

____ day of _____, 20__.

Approved as to form by
Office of County Attorney

By: _____

(Date)
Assistant County Attorney

BUSINESS ASSOCIATE

WITNESSES:

[INSERT NAME OF COMPANY]

By: _____
[TYPE NAME AND TITLE]

Dated ____ day of _____, 20__.

EXHIBIT F

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RLI/Bid/Contract No. _____

Project Title _____

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or
suppliers name
and address

Date of disputed
invoice

Amount in
dispute

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated _____, 20__

Contractor

By _____

(Signature)

By _____

(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

(Title or rank)

My commission expires:

(Serial number, if any)

OPTIONAL AND SUBSTITUTE PROVISIONS

Substitute for Section 2.2 when the Procurement Code applies:

2.2 SECOND PARTY acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code), as may be amended from time to time.

Substitute for Article 4 when reimbursables are applicable:

4.1 COUNTY agrees to pay SECOND PARTY, in the manner specified in Section 4.3, the total amount of _____ Dollars (\$_____) for work actually performed and completed pursuant to this Agreement and _____ Dollars (\$_____) for all reimbursables agreed to in Section 4.2, which amounts shall be accepted by SECOND PARTY as full compensation for all such work and expenses. It is acknowledged and agreed by SECOND PARTY that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate SECOND PARTY for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon SECOND PARTY's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.2 REIMBURSABLES

4.2.1 In accordance with and pursuant to the Broward County Procurement Code and subject to the limitations set forth below, expenses, reasonable in amount and nature, which are directly attributable to the Project may be charged at no more than actual cost. The maximum sum which may be charged for expenses shall not exceed _____ Dollars (\$_____), and shall be limited to the following:

- a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes, as may be amended from time to time. Transportation expenses to locations outside the Miami-Dade/Broward/Palm Beach County area or from locations outside the Miami-Dade/Broward/Palm Beach County area will not be reimbursed unless specifically authorized in advance and in writing by the Contract Administrator. Transportation expenses to and from locations within the Miami-Dade/Broward/Palm Beach County area will not be reimbursed.

- b) Cost of printing drawings and specifications which are required by or of SECOND PARTY to deliver services set forth in this Agreement.

4.2.2 A detailed statement of expenses must accompany any request for reimbursement. Expenses other than auto travel must be documented by copies of paid receipts, checks, or other evidence of payment.

4.2.3 It is acknowledged and agreed to by SECOND PARTY that the dollar limitation set forth in Section 4.2.1 is a limitation upon, and describes the maximum extent of, COUNTY's obligation to reimburse SECOND PARTY for expenses, but does not constitute a limitation, of any sort, upon SECOND PARTY's obligation to incur such expenses or perform the services identified in Article 2.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 SECOND PARTY may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. For reimbursable expenses, SECOND PARTY may submit invoices no more often than bi-weekly. Invoices shall designate the nature of the services performed and/or the expenses incurred. SECOND PARTY shall submit with each invoice a Certification of Payments to Subcontractors (Exhibit "F"). The certification shall be accompanied by a copy of the notification sent to each subcontractor listed in item 2 of the form, explaining the good cause why payment has not been made.

4.3.2 COUNTY shall pay SECOND PARTY within thirty (30) calendar days of receipt of SECOND PARTY's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of SECOND PARTY to comply with a term, condition, or requirement of this Agreement.

4.4 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by

SECOND PARTY or failure to comply with this Agreement. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to the Contract Administrator, payment may be made. The amount withheld shall not be subject to payment of interest by COUNTY.

4.5 Payment will be made to SECOND PARTY at:

Substitute for Article 5 when SECOND PARTY is a state governmental entity:

GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. SECOND PARTY is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

Substitute for Article 5 if construction is part of the contract and if SECOND PARTY is a non-governmental entity:

- 5.1 SECOND PARTY shall indemnify and hold harmless COUNTY, its officers, agents, servants, and employees from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of SECOND PARTY and persons employed or utilized by SECOND PARTY in the performance of this Agreement. These indemnifications shall survive the term of this Agreement.
- 5.2 SECOND PARTY acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by COUNTY, the adequacy of which is hereby acknowledged by SECOND PARTY, is given as specific consideration to SECOND PARTY for this indemnification.

Substitute for Article 6 when SECOND PARTY is a state governmental entity:

SECOND PARTY is an entity subject to Section 768.28, Florida Statutes, and SECOND PARTY shall furnish the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of said Agreement.

Substitute for Section 7.1 when no cure of default is provided:

7.1 This Agreement may be terminated by either party upon not less than ten (10) days' written notice for breach, without the right to cure by the party in breach, or for convenience by the Board upon not less than thirty (30) days' written notice. If this Agreement was entered into on behalf of COUNTY by someone other than the Board, termination by COUNTY may be by action of the County Administrator or the COUNTY representative (including his or her successor) who entered into this Agreement on behalf of COUNTY. This Agreement may also be terminated by the Contract Administrator upon such notice as the Contract Administrator deems appropriate under the circumstances in the event the Contract Administrator determines that termination is necessary to protect the public health or safety.

Add to Article 9 for contracts with non-profit organizations (see below for governments):

9.0 FINANCIAL STATEMENTS

SECOND PARTY shall provide to the Contract Administrator annual financial statements, all audited by a Certified Public Accountant, consisting of a balance sheet; a statement of support, revenue, expenses, and changes in fund balances, or similar titles; and a statement of functional expenses in support of the total program and supporting services for the period, and any management letter(s) thereby generated, in a form acceptable to the Broward County Commission Auditor.

Said annual financial statement shall account for all monies received from COUNTY via explicit, discrete disclosures and/or accompanying notes to the financial statements.

Said financial statements for this Agreement shall be submitted to the Contract Administrator within ninety (90) days after the close of each of SECOND PARTY's fiscal years in which SECOND PARTY accounts for funds under this Agreement.

Late submission of the financial statements or absence of discrete disclosure shall entitle COUNTY to recover any payment made under this Agreement unless the financial statements are received by the Contract Administrator and are acceptable to the Broward County Commission Auditor.

SECOND PARTY acknowledges submission of audited financial statements to any other Broward County office, agency, or division does not constitute compliance with the requirement to submit that material to the Contract Administrator for this Agreement.

Add to Article 9 for contracts with non-profit organizations (see below for governments):

9.0 MANAGEMENT LETTERS

SECOND PARTY shall provide the Contract Administrator any and all management letters arising from audited financial statements within ninety (90) days of the date of said management letter.

SECOND PARTY shall provide to the Contract Administrator the schedule of correction developed in response to said management letter(s) within thirty (30) days of its development.

SECOND PARTY shall provide to the Contract Administrator any compliance audits required by law within ninety (90) days after the close of each of SECOND PARTY's fiscal years in which SECOND PARTY accounts for funds under this Agreement.

Add to Article 9 for contracts with governmental entities:

9.0 FINANCIAL STATEMENTS/MANAGEMENT LETTERS

SECOND PARTY shall provide two (2) copies of SECOND PARTY's audited financial statements consisting of Balance Sheets, Statement of Operations, Statement of Changes in Fund Balances, Statement of Cash Flows, any management letter(s) thereby generated as it relates to funding provided under this Agreement, and SECOND PARTY's response to any management letter(s). The audit of the financial statements shall be performed by an independent certified public accounting firm in accordance with Generally Accepted Auditing Standards and Government Auditing Standards issued by the Comptroller of the United States.

SECOND PARTY shall provide to COUNTY's Contract Administrator three (3) copies of a special report prepared by an independent certified public accountant, or by SECOND PARTY's internal auditor on the following elements. The special report shall show all revenues, by source, and all expenditures as set forth in the Scope of Services for the program being funded by this Agreement. The report shall specifically disclose any funds received which were not expended in accordance with this Agreement or with any regulations incorporated by reference therein. It shall identify the total of noncompliant expenditures as due back to COUNTY.

If the special report is prepared by an independent certified public accountant, it shall be in accordance with generally accepted auditing standards. If the special report is prepared by an internal auditor, it shall be a review and contain a report on the reports required by this Agreement from the financial records of SECOND

PARTY in accordance with the normal internal audit procedures of SECOND PARTY. The special report is to be filed with SECOND PARTY's governing body.

SECOND PARTY shall submit two (2) copies of the financial statements described in the first paragraph of this section, one (1) copy of the accompanying management letter, if any, and three (3) copies of the special report described in second paragraph of this section to COUNTY's Contract Administrator within one hundred twenty (120) days after the close of SECOND PARTY's fiscal years in which SECOND PARTY receives funds under this Agreement.

The due date for the financial disclosure information described in the first paragraph of this section and the special report described in the second paragraph of this may be extended upon the occurrence of COUNTY granting SECOND PARTY an extension of the time in writing to provide the information.

SECOND PARTY shall provide COUNTY's Contract Administrator any and all management letters arising from audited financial statements within ninety (90) days of the date of said management letter as it relates to the program described in this Agreement.

SECOND PARTY shall provide to COUNTY's Contract Administrator the schedule of correction developed in response to said management letter(s) within thirty (30) days of its development.

SECOND PARTY shall provide to COUNTY's Contract Administrator any compliance audits required by law within one hundred twenty (120) days after the close of each of SECOND PARTY's fiscal years in which SECOND PARTY accounts for the funds under this Agreement.

Add to Article 9 when the contracts subject to Section 21.31(a)(3) of the Procurement Code:

9.0 DRUG-FREE WORKPLACE

It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by SECOND PARTY shall serve as SECOND PARTY's required certification that it either has or that it will establish a drug-free work place in accordance with Section 287.087, Florida Statutes, as may be amended from time to time, and Chapter 21.31(a)(2) of the Broward County Procurement Code as may be amended from time to time.

Add to Article 9 ONLY when the contract is pursuant to Section 21.9 of the Procurement Code, or when state or federal law or regulation requires, such as CCNA:

9.0 CONTINGENCY FEE

SECOND PARTY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SECOND PARTY, 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 SECOND PARTY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, COUNTY shall have the right, at its discretion, to terminate this Agreement without liability, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

Add to Article 9 when the Living Wage Ordinance is applicable:

9.0 LIVING WAGE REQUIREMENT

To the extent SECOND PARTY is a "covered employer" within the meaning of Broward County Ordinance No. 2002-45, as may be amended from time to time, SECOND PARTY agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and SECOND PARTY shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete all of the obligations set forth therein. SECOND PARTY shall be responsible for and shall ensure that all of its subcontractors that qualify as covered employers fully comply with the requirements of such ordinance and satisfy, comply with, and complete all of the obligations set forth therein. If the term of this Agreement is less than six (6) months, then SECOND PARTY shall nevertheless provide the reports and records identified in Section 26-103 of the Living Wage Ordinance. Such reports and records shall be provided within thirty (30) days of the expiration or termination of this Agreement.

Add to Article 9 if a force majeure clause is desired:

9.0 FORCE MAJEURE

If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable

steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.