

# MIAMI BEACH

## Request for Qualifications (RFQ) 2022-493-ND Fireworks Display

### **SOLICITATION SECTIONS:**

- 0100 INSTRUCTIONS TO RESPONDENTS
- 0200 GENERAL CONDITIONS
- 0300 PROPOSAL SUBMITTAL INSTRUCTIONS & FORMAT
- 0400 PROPOSAL EVALUATION

### **APPENDICES:**

- APPENDIX A INSURANCE REQUIREMENTS
- APPENDIX B SAMPLE CONTRACT

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**SECTION 0100      INSTRUCTIONS TO RESPONDENTS & GENERAL CONDITIONS**

**1. GENERAL.** This Request for Qualifications (RFQ) is issued by the City of Miami Beach, Florida (the “City”), as the means for prospective Proposers to submit proposals for the City’s consideration in evaluating qualifications to select a firm with whom it may negotiate an agreement for the purpose noted herein.

The City utilizes Periscope S2G (formally known as BidSync) ([www.periscopeholdings.com](http://www.periscopeholdings.com) or [www.bidsync.com](http://www.bidsync.com)) for automatic notification of competitive solicitation opportunities and document fulfillment, including the issuance of any addendum to this RFQ. Any prospective Proposer who has received this RFQ by any means other than through Periscope S2G must register immediately with Periscope S2G to assure it receives any addendum issued to this RFQ. Failure to receive an addendum may result in disqualification of proposal submitted.

**2. PURPOSE.**

The City is seeking proposals from qualified firms interested in being considered for fireworks/pyrotechnics services. It is the City’s intent to evaluate qualifications, as stipulated in Sections 0300 and 0400 of this RFQ, and select the firm deemed to be most qualified to negotiate an agreement for three years, plus two one-year optional renewals, for various fireworks events.

**3. SCOPE OF WORK.**

The scope of work may include but not be limited to the following subject to negotiations with the most qualified firm.

- A fireworks display program (e.g. opening, body, mid-level, finale) with a variety of high-quality shells, cakes, and sizes as agreed upon.
- Successful bidder will furnish qualified personnel to conduct said program as its sole cost and expense and will pay all freight, express, and cartage charges, all deliveries to the selected. No fireworks may be stored on-site.
- Successful bidder is responsible for supplying all necessary materials for constructing mortar racks including lumber and HDPE (High-Density Polyethylene) tubes. At the conclusion of the fireworks display, the successful bidder must conduct a complete and thorough search of the area to be made for unfired fireworks or pieces (duds) which have failed to function or ignite and shall dispose of same in a safe manner at the cost of the successful bidder.
- Before leaving the facility all garbage, debris, and equipment must be removed from the site by the successful bidder. Under no circumstances are any materials or garbage to be left behind.
- The successful bidder will be responsible to identify, apply and secure any permits necessary for the event.

**4. ANTICIPATED RFQ TIMETABLE.** The tentative schedule for this solicitation is as follows:

RFQ Issued	July 22, 2022
Pre-Proposal Meeting	August 5, 2022 @ 2:00 p.m. ET <b>Join on your computer or mobile app</b> <a href="#">Click here to join the meeting</a> <b>Or call in (audio only)</b> +1 786-636-1480 United States, Miami Phone Conference ID: #
Deadline for Receipt of Questions	August 19, 2022 @ 5:00 p.m. ET
Responses Due	September 5, 2022 @ 3:00 p.m. ET To join on your computer or mobile app <a href="#">Click here to join the meeting</a> <b>Or call in (audio only)</b>

	(1) Dial the TELEPHONE NUMBER: 1 786-636-1480 (Toll-free North America) (2) Enter the MEETING NUMBER #
Evaluation Committee Review	TBD
Tentative Commission Approval	TBD
Contract Negotiations	Following Commission Approval

**5. PROCUREMENT CONTACT.** Any questions or clarifications concerning this solicitation shall be submitted to the Procurement Contact noted below:

Procurement Contact: Natalia Delgado Telephone: 305-673-7000 x26263 Email: NataliaDelgado@miamibeachfl.gov  
 Additionally, the City Clerk is to be copied on all communications via e-mail at: [RafaelGranado@miamibeachfl.gov](mailto:RafaelGranado@miamibeachfl.gov); or via facsimile: 786-394-4188.

The Proposal title/number shall be referenced on all correspondence. All questions or requests for clarification must be received no later than ten (10) calendar days prior to the date proposals are due as scheduled in Section 0100-4. All responses to questions/clarifications will be sent to all prospective Proposers in the form of an addendum.

**6. PRE-PROPOSAL MEETING OR SITE VISIT(S).** A pre-proposal meeting or site visit(s) may be scheduled. Attendance for the pre-proposal meeting shall be via web conference and recommended as a source of information but is not mandatory. Proposers interested in participating in the Pre-Proposal Meeting must follow these steps:

**Join on your computer or mobile app**  
[Click here to join the meeting](#)  
**Or call in (audio only)**  
 +1 786-636-1480 United States, Miami  
 Phone Conference ID: #

Proposers who are participating should send an e-mail to the contact person listed in this RFQ expressing their intent to participate.

**7. PRE-PROPOSAL INTERPRETATIONS.** Oral information or responses to questions received by prospective Proposers are not binding on the City and will be without legal effect, including any information received at pre-submittal meeting or site visit(s). The City by means of Addenda will issue interpretations or written addenda clarifications considered necessary by the City in response to questions. Only questions answered by written addenda will be binding and may supersede terms noted in this solicitation. Addendum will be released through *Periscope S2G*. Any prospective proposer who has received this RFQ by any means other than through *Periscope S2G* must register immediately with *Periscope S2G* to assure it receives any addendum issued to this RFQ. Failure to receive an addendum may result in disqualification of proposal. Written questions should be received no later than the date outlined in the **Anticipated RFQ Timetable** section.

**8. CONE OF SILENCE.** This RFQ is subject to, and all proposers are expected to be or become familiar with, the City's Cone of Silence Requirements, as codified in Section 2-486 of the City Code. Proposers shall be solely responsible for ensuring that all applicable provisions of the City's Cone of Silence are complied with, and shall be subject to any and all sanctions, as prescribed therein, including rendering their response voidable, in the event of such non-compliance. Communications regarding this solicitation are to be submitted in writing to the Procurement Contact named herein with a copy to the City Clerk at [rafaelgranado@miamibeachfl.gov](mailto:rafaelgranado@miamibeachfl.gov)

**9. ADDITIONAL INFORMATION OR CLARIFICATION.** After proposal submittal, the City reserves the right to require additional information from Proposers (or Proposer team members or sub-consultants) to determine: qualifications

(including, but not limited to, litigation history, regulatory action, or additional references); and financial capability (including, but not limited to, annual reviewed/audited financial statements with the auditors notes for each of their last two complete fiscal years).

**10. PROPOSER'S RESPONSIBILITY.** Before submitting a response, each Proposer shall be solely responsible for making any and all investigations, evaluations, and examinations, as it deems necessary, to ascertain all conditions and requirements affecting the full performance of the contract. Ignorance of such conditions and requirements, and/or failure to make such evaluations, investigations, and examinations, will not relieve the Proposer from any obligation to comply with every detail and with all provisions and requirements of the contract, and will not be accepted as a basis for any subsequent claim whatsoever for any monetary consideration on the part of the Proposer.

**11.DETERMINATION OF AWARD.** The City Manager may appoint an evaluation committee to assist in the evaluation of proposals received. The evaluation committee is advisory only to the city manager. The city manager may consider the information provided by the evaluation committee process and/or may utilize other information deemed relevant. The City Manager's recommendation need not be consistent with the information provided by the evaluation committee process and takes into consideration Miami Beach City Code Section 2-369, including the following considerations:

- (1) The ability, capacity and skill of the Proposer to perform the contract.
- (2) Whether the Proposer can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the Proposer.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the Proposer with laws and ordinances relating to the contract.

The City Manager may recommend to the City Commission the Proposer(s) s/he deems to be in the best interest of the City or may recommend rejection of all proposals. The City Commission shall consider the City Manager's recommendation and may approve such recommendation. The City Commission may also, at its option, reject the City Manager's recommendation and select another Proposal or Proposals which it deems to be in the best interest of the City, or it may also reject all Proposals.

**12. NEGOTIATIONS.** Following selection, the City reserves the right to enter into further negotiations with the selected Proposer. Notwithstanding the preceding, the City is in no way obligated to enter into a contract with the selected Proposer in the event the parties are unable to negotiate a contract. It is also understood and acknowledged by Proposers that no property, contract or legal rights of any kind shall be created at any time until and unless an Agreement has been agreed to; approved by the City; and executed by the parties.

**13. E-VERIFY.** As a contractor you are obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Therefore, you shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

**14. PERISCOPE S2G (FORMALLY BIDS SYNC).** The Procurement Department utilizes Periscope S2G, Supplier-to-Government electronic bidding (e-Bid) platform. If you would like to be notified of available competitive solicitations released by the City you must register and complete your vendor qualifications through Periscope S2G, Supplier-to-Government [www.bidsync.com/Miami-Beach](http://www.bidsync.com/Miami-Beach). Registration is easy and will only take a few minutes. For detailed instructions on how to register, complete vendor qualifications and submit electronic bids visit <https://www.miamibeachfl.gov/city-hall/procurement/for-approval-how-to-become-a-vendor/>.

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Should you have any questions regarding this system or registration, please visit the above link or contact Periscope S2G, Supplier-to-Government at [support@bidsync.com](mailto:support@bidsync.com) or 800.990.9339, option 1, option 1.

**15. HOW TO MANAGE OR CREATE A VENDOR PROFILE ON VENDOR SELF SERVICE (VSS).** In addition to registering with Periscope S2G, the City encourages vendors to register with our online Vendor Self-Service web page, allowing City vendors to easily update contacts, attachments (W-9), and commodity information. The Vendor Self-Service (VSS) webpage (<https://selfservice.miamibeachfl.gov/vss/Vendors/default.aspx>) will also provide you with purchase orders and payment information.

Should you have any questions and/or comments, do not hesitate to submit them to [vendorsupport@miamibeachfl.gov](mailto:vendorsupport@miamibeachfl.gov)

**16. SUPPLIER DIVERSITY.** In an effort to increase the number and diversity of supplier options in the procurement of goods and services, the City has established a registry of LGBT-owned businesses, as certified by the National LGBT Chamber of Commerce (NGLCC) and small and disadvantaged businesses, as certified by Miami-Dade County. See authorizing resolutions [here](#).

If your company is certified as an LGBT-owned business by NGLCC, or as a small or disadvantaged business by Miami-Dade County, click on the link below to be added to the City's supplier registry (Vendor Self-Service) and bid system (Periscope S2G, Supplier-to-Government). These are two different systems and it is important that you register for both.

Click to see acceptable certification and to register: <https://www.miamibeachfl.gov/city-hall/procurement/how-to-become-a-vendor/>.

**SECTION 0200**

**GENERAL CONDITIONS**

**TERMS & CONDITIONS –SERVICES.** By virtue of submitting a proposal in response to this solicitation, proposer agrees to be bound by and in compliance with the Terms and Conditions for Services (dated April 13, 2020), incorporated herein, which may be found at the following link:

<https://www.miamibeachfl.gov/city-hall/procurement/standard-terms-and-conditions/>

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**SECTION 0300 PROPOSAL SUBMITTAL INSTRUCTIONS AND FORMAT**

**1. ELECTRONIC RESPONSES (ONLY).** Proposals must be submitted electronically through Periscope S2G (formerly BidSync) on or before the date and time indicated. Hard copy proposals or proposals received through email or facsimile are not acceptable and will be rejected.

A proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal until the deadline for proposal submittals. The City will only consider the latest version of the bid.

Electronic proposal submissions may require the uploading of attachments. All documents should be attached as separate files in accordance with the instructions included in Section 4, below. Attachments containing embedded documents or proprietary file extensions are prohibited. It is the Bidder's responsibility to assure that its bid, including all attachments, is uploaded successfully.

Only proposal submittals received, and time stamped by Periscope S2G (formerly BidSync) prior to the proposal submittal deadline shall be accepted as timely submitted. Late bids cannot be submitted and will not be accepted. Bidders are cautioned to allow sufficient time for the submittal of bids and uploading of attachments. Any technical issues must be submitted to Periscope S2G (formerly BidSync) by contacting (800) 990-9339 (toll free) or [S2G@periscopeholdings.com](mailto:S2G@periscopeholdings.com). The City cannot assist with technical issues regarding submittals and will in no way be responsible for delays caused by any technical or other issue.

**It is the sole responsibility of each Bidder to ensure its proposal is successfully submitted in Periscope S2G prior to the deadline for proposal submittals.**

**2. NON-RESPONSIVENESS.** Failure to submit the following requirements shall result in a determination of non-responsiveness. Non-responsive proposals will not be considered.

1. Bid Submittal Questionnaire (submitted electronically).

**3. OMITTED OR ADDITIONAL INFORMATION.** Failure to complete and submit the Bid Submittal Questionnaire (submitted electronically) with the bid and by the deadline for submittals shall render a proposal non-responsive. With the exception of the Bid Submittal Questionnaire (completed and submitted electronically), the City reserves the right to seek any omitted information/documentation or any additional information from Proposer or other source(s), including but not limited to: any firm or principal information, applicable licensure, resumes of relevant individuals, client information, financial information, or any information the City deems necessary to evaluate the capacity of the Proposer to perform in accordance with contract requirements. Failure to submit any omitted or additional information in accordance with the City's request shall result in proposal being deemed non-responsive.

**4. ELECTRONIC PROPOSAL FORMAT.** In order to maintain comparability, facilitate the review process and assist the Evaluation Committee in review of proposals, it is strongly recommended that proposals be organized and tabbed in accordance with the tabs, and sections as specified below. The electronic submittal should be tabbed as enumerated below and contain a table of contents with page references. The electronic proposal shall be submitted through the "Line Items" attachment tab in Periscope S2G.

<b>TAB 1</b>	<b>Cover Letter &amp; Table of Contents</b>
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<p><b>Cover Letter and Table of Contents.</b> The cover letter must indicate Proposer and Proposer Primary Contact for the purposes of this solicitation. The table of contents should indicate the tabs, sections with tabs and page numbers to facilitate the evaluation committee's review.</p>
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## TAB 2

### Experience & Qualifications of the Firm

**2.1 Qualifications of Proposing Firm.** Submit detailed information regarding the relevant experience and proven track record of the firm and/or its principals in providing the scope of services similar as identified in this solicitation, including experience in providing similar scope of services to public sector agencies. Submit at least three (3) projects that demonstrate expertise in providing firework displays within the last three (3) years. For each project submitted, the following is required.

- project name,
- project description,
- agency/client name,
- agency/client contact,
- contact telephone & email, and
- year(s) and term of engagement.

For each project, identify whether the experience is for the firm or for a principal (include name of principal).

## TAB 3

### Approach and Methodology

Submit detailed information on the approach and methodology that the proposer has utilized on previous engagements to successfully complete high-quality and safe displays including, at a minimum, the following factors.

- Describe the types and amounts of ground (set pieces) or low-level devices (cakes, candles) used.
- Provide timetables for set-up; live load; and display time.
- Describe ability and commitment to providing shall furnish a minimum of three licensed and recognized pyrotechnic operators and assistants to fire the show in 20 – 24 minutes with drawn-out pauses between shells.
- Provide examples of fireworks display programs (e.g. opening, body, mid-level, finale) with a variety of high-quality shells, cakes, and sizes provided to other agencies.
- Describe the bidder's safety protocol to assure all attendants, employees, and members of the public are kept safe.
- Describe how, before leaving the facility all garbage, debris and equipment will be removed from the site by the successful bidder. Under no circumstances are any materials or garbage to be left behind.

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**SECTION 0400      PROPOSAL EVALUATION**

**1. EVALUATION COMMITTEE INITIAL REVIEW OF PROPOSALS.** An Evaluation Committee, appointed by the City Manager, shall meet to evaluate and rank each responsive Statement of Qualifications received in accordance with the criteria set forth in Sub-section 4 below. The Evaluation Committee may complete the initial review of proposals with or without presentations. The Evaluation Committee’s scores and rankings are only advisory to the City Manager, who will utilize the results to take one of the following actions:

- a. Recommend that the City Commission authorize negotiations or award a contract to one or more firms in accordance with Section 0100, Sub-section 10; or
- b. Recommend that the City Commission short-list one or more firms for further consideration by the Evaluation Committee; or
- c. Recommend to the City Commission that all firms, if more than one (1) responsive submittal is received, be rejected.

**2. PRESENTATIONS BY SHORT-LISTED FIRMS.** If a short-listing of firms responding to this RFQ is approved, the short-listed firms may be required to make presentations to and be interviewed by the Evaluation Committee. In further considering the short-listed firms, the Evaluation Committee will utilize the criteria set forth in Sub-section 4 below.

**3. TECHNICAL ADVISORS.** The City, in its discretion, may utilize technical or other advisers to assist the evaluation committee or the City Manager in the evaluation of proposals.

**4. EVALUATION CRITERIA.** Responsive, responsible proposals will be evaluated in accordance with the following criteria:

Qualitative Criteria	Maximum Points
Experience and Qualifications	60
Approach and Methodology	40
<b>TOTAL AVAILABLE POINTS for Qualitative Criteria</b>	<b>100</b>
Quantitative Criteria	Maximum Points
Veterans Preference	5
<b>TOTAL AVAILABLE POINTS for Qualitative and Quantitative Criteria</b>	<b>105</b>

**5. QUALITATIVE CRITERIA.** The Evaluation Committee shall review responsive, responsible proposals and assign points for the qualitative factors only. The Evaluation Committee shall not consider quantitative factors (e.g. veteran’s preference) in its review of proposals. The Evaluation Committee shall act solely in an advisory capacity to the City Manager. The results of the Evaluation Committee process do not constitute an award recommendation. The City Manager may utilize, but is not bound by, the results of the Evaluation Committee process, as well as consider any feedback or information provided by staff, consultants or any other third-party in developing an award recommendation in accordance with Section 0100, Sub-section 12. In its review of proposals received, the Evaluation Committee may review and score all proposals, with or without conducting interview sessions, in accordance with the evaluation criteria.

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**6. QUANTITATIVE CRITERIA.** Procurement Department staff will assign points for the quantitative criteria. Veterans' Preference points will be assigned in accordance with Section 2-374 of the City Code

**7. DETERMINATION OF FINAL RANKING.** The sum of the evaluation criteria points will be converted to rankings in accordance with the example below:

		Proposer A	Proposer B	Proposer C
<b>Committee Member 1</b>	Qualitative Points	82	74	80
	Quantitative Points	5	5	0
	Total	87	79	80
	Rank	1	3	2
<b>Committee Member 2</b>	Qualitative Points	82	85	72
	Quantitative Points	5	5	0
	Total	87	90	72
	Rank	1	2	3
<b>Committee Member 2</b>	Qualitative Points	90	74	66
	Quantitative Points	5	5	0
	Total	95	79	66
	Rank	1	2	3
<b>Low Aggregate Score</b>		<b>3</b>	<b>7</b>	<b>8</b>
<b>Final Ranking*</b>		<b>1</b>	<b>2</b>	<b>3</b>

It is important to note that the results of the proposal evaluation process in accordance with Section 0400 does not represent an award recommendation. The City Manager will utilize the results of the proposal evaluation process, and any other information he deems appropriate, to develop an award recommendation to the City Commission, which may differ from the results of the proposal evaluation process and final rankings.

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APPENDIX A

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# Insurance Requirements

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2022-493-ND  
FIREWORKS DISPLAY

PROCUREMENT DEPARTMENT  
1755 Meridian Avenue, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

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The vendor shall maintain the below required insurance in effect prior to awarding the contract and for the duration of the contract. The maintenance of proper insurance coverage is a material element of the contract and failure to maintain or renew coverage may be treated as a material breach of the contract, which could result in withholding of payments or termination of the contract.

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440, and Employer Liability Insurance for bodily injury or disease. Should the Vendor be exempt from this Statute, the Vendor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt Vendor shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this contract or (ii) a copy of a Certificate of Exemption.
- B. Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence, \$10,000,000 aggregate.
- C. Automobile Liability Insurance covering any automobile, if vendor has no owned automobiles, then coverage for hired and non-owned automobiles, with limit no less than \$100,000 combined per accident for bodily injury and property damage.

**Additional Insured** - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the contractor's insurance.

**Notice of Cancellation** - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

**Waiver of Subrogation** – Vendor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

**Acceptability of Insurers** – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

**Verification of Coverage** – Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete,

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certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

**CERTIFICATE HOLDER MUST READ:**

CITY OF MIAMI BEACH  
c/o EXIGIS Insurance Compliance Services  
P.O. Box 4668 – ECM #35050  
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

[Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

**Special Risks or Circumstances** - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

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APPENDIX B

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# Sample Contract

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2022-493-ND  
FIREWORKS DISPLAY

PROCUREMENT DEPARTMENT  
1755 Meridian Avenue, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH  
AND  
[FILL IN CONSULTANT NAME]  
FOR  
[XXXXXXXXXXXXXXXXXXXX], PURSUANT TO  
[FILL IN RFP, RFQ, OR ITB#]**

This Professional Services Agreement (“Agreement”) is entered into this XXXXXX day of XXXXXXXXXXXX, 20\_\_\_\_ (“Effective Date”), between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (the “City”), and **[FILL IN CONSULTANT NAME]**, a **[FILL IN TYPE OF ENTITY/I.E. CORPORATION, LLC, ETC.]**, whose address is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (“Consultant”).

**SECTION 1  
DEFINITIONS**

**Agreement:** This Agreement between the City and Consultant, including any exhibits and amendments thereto.

**City Manager:** The chief administrative officer of the City.

**City Manager’s Designee:** The City staff member who is designated by the City Manager to administer this Agreement on behalf of the City. The City Manager’s designee shall be the \_\_\_\_\_ Department Director.

**Consultant:** For the purposes of this Agreement, Consultant shall be deemed to be an independent contractor, and not an agent or employee of the City.

**Services:** All services, work and actions by the Consultant performed or undertaken pursuant to the Agreement.

**Fee:** Amount paid to the Consultant as compensation for Services.

**Proposal Documents:** Proposal Documents shall mean City of Miami Beach **[FILL IN RFP, RFQ, OR ITB]** No. **[XXXXXXXXXXXXXXXXXXXX]** for **[XXXXXXXXXXXXXXXXXXXXXXXXXXXX]**, together with all amendments thereto, issued by the City in contemplation of this Agreement **[FILL IN CORRECT ABBREVIATION RFP, RFQ, OR ITB]**, and the Consultant’s proposal in response thereto (“Proposal”), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: this Agreement; the **[FILL IN RFP, RFQ, or ITB]**; and the Proposal.

Updated 01-12-2021

Risk Manager: The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139; telephone number (305) 673-7000, Ext. 26724; and fax number (305) 673-7529.

**SECTION 2**  
**SCOPE OF SERVICES**

**2.1** In consideration of the Fee to be paid to Consultant by the City, Consultant shall provide the work and services described in Exhibit "A" hereto (the "Services").

**[NOTE: EXHIBIT "A" MUST INCLUDE DETAILED DESCRIPTION OF SERVICES]**

Although Consultant may be provided with a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services performed by the Consultant; where the Services are performed (although the City will provide Consultant with the appropriate location to perform the Services); when the Services are performed, including how many days a week the Services are performed; how the Services are performed, or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Consultant shall be performed in accordance with the terms and conditions set forth in Exhibit "A" and to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, Consultant should contact the following person:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2.2** Consultant's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in Exhibit **[XXX]** hereto.

**[NOTE: TIMELINE FOR DELIVERABLES CAN ALSO BE INCLUDED IN EXHIBIT "A" OR IN SEPARATE EXHIBIT]**

**SECTION 3**  
**TERM**

The term of this Agreement ("Term") shall commence upon execution of this Agreement by all parties hereto (the Effective Date set forth on p. 1 hereof), and shall have an initial term of **[XXXXXXXXXXXX]**, with **[XXXXXXXXXXXX]** renewal options, to be exercised at the City Manager's sole option and discretion, by providing Consultant with written notice of same no less than thirty (30) days prior to the expiration of the initial term.

Notwithstanding the Term provided herein, Consultant shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in Exhibit **[XXX]** hereto.



**SECTION 4**

**FEE**

4.1 In consideration of the Services to be provided, Consultant shall be compensated on a fixed fee basis, in the amount of \$XXXXXXXX, for a total annual amount not to exceed \$XXXXXXXX.

4.2 [NOTE: INCLUDE AMOUNT FOR REIMBURSABLES, IF ANY].

4.3 [NOTE: INCLUDE HOW FEE IS TO BE PAID – I.E. “X” PERCENTAGE UP FRONT; “X” UPON DELIVERY; MONTHLY; LUMP SUM; ETC.].

4.4 **INVOICING**

Upon receipt of an acceptable and approved invoice, payment(s) shall be made within forty-five (45) days for that portion (or those portions) of the Services satisfactorily rendered (and referenced in the particular invoice).

Invoices shall include a detailed description of the Services (or portions thereof) provided, and shall be submitted to the City at the following address:

Accounts Payable: [Payables@miamibeachfl.gov](mailto:Payables@miamibeachfl.gov)

**SECTION 5**  
**TERMINATION**

5.1 **TERMINATION FOR CAUSE**

If the Consultant shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, the City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular term(s) of this Agreement, and shall grant Consultant ten (10) days to cure such default. If such default remains uncured after ten (10) days, the City may terminate this Agreement without further notice to Consultant. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's rights and remedies against Consultant. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

5.2 **TERMINATION FOR CONVENIENCE OF THE CITY**

THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE AGREEMENT AT ANY TIME DURING THE TERM BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION; WHICH SHALL BECOME EFFECTIVE WITHIN THIRTY (30) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF SUCH NOTICE. ADDITIONALLY, IN THE EVENT OF A PUBLIC HEALTH, WELFARE OR SAFETY CONCERN, AS DETERMINED BY THE CITY MANAGER, IN THE CITY MANAGER'S SOLE DISCRETION, THE CITY MANAGER, PURSUANT TO A VERBAL OR WRITTEN NOTIFICATION TO CONSULTANT, MAY IMMEDIATELY SUSPEND THE SERVICES UNDER THIS AGREEMENT FOR A TIME CERTAIN, OR IN THE ALTERNATIVE, TERMINATE THIS AGREEMENT ON A GIVEN DATE. IF THE AGREEMENT IS TERMINATED FOR CONVENIENCE BY THE CITY, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED UP TO THE DATE OF TERMINATION; FOLLOWING WHICH THE CITY SHALL BE DISCHARGED FROM ANY AND ALL LIABILITIES, DUTIES, AND TERMS ARISING OUT OF, OR BY VIRTUE OF, THIS AGREEMENT.

### **5.3 TERMINATION FOR INSOLVENCY**

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 5.2.

## **SECTION 6 INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **6.1 INDEMNIFICATION**

Consultant agrees to indemnify, defend and hold harmless the City of Miami Beach and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its officers, employees, agents, contractors, or any other person or entity acting under Consultant's control or supervision, in connection with, related to, or as a result of the Consultant's performance of the Services pursuant to this Agreement. To that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant shall in no way limit the Consultant's responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The parties agree that one percent (1%) of the total compensation to Consultant for performance of the Services under this Agreement is the specific consideration from the City to

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the Consultant for the Consultant's indemnity agreement. The provisions of this Section 6.1 and of this indemnification shall survive termination or expiration of this Agreement.

**6.2 INSURANCE REQUIREMENTS [NOTE: INSURANCE TYPES AND LIMITS BELOW SHOULD ALWAYS BE SAME AS WHAT WAS SPECIFIED IN BID DOCUMENTS]**

6.3 The Consultant shall maintain the below required insurance in effect prior to awarding the agreement and for the duration of the agreement. The maintenance of proper insurance coverage is a material element of the agreement and failure to maintain or renew coverage may be treated as a material breach of the contract, which could result in withholding of payments or termination of the Agreement.

A. General Liability, in the amount of \$1,000,000 combined single limit, for bodily injury and property damage. The City of Miami Beach must be endorsed as an Additional Insured as their interest may appear.

B. Consultant Professional Liability, in the amount of \$1,000,000; and

C. Workers Compensation & Employers Liability, as required pursuant to Chapter 440, Florida Statutes. A waiver of subrogation endorsement must be provided.

6.4 **Additional Insured** - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the Consultant's insurance.

6.5 **Notice of Cancellation** - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

6.6 **Waiver of Subrogation** – Consultant agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

6.7 **Acceptability of Insurers** – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

6.8 **Verification of Coverage** – Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

**CERTIFICATE HOLDER ON ALL COI MUST READ:**

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CITY OF MIAMI BEACH  
c/o EXIGIS Insurance Compliance Services  
P.O. Box 947  
Murrieta, CA 92564

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

[Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

6.9 **Special Risks or Circumstances** - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

**SECTION 7**  
**LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER**

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Consultant and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

**SECTION 8**  
**LIMITATION OF CITY'S LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$10,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

**SECTION 9**  
**DUTY OF CARE/COMPLIANCE WITH APPLICABLE LAWS/PATENT RIGHTS; COPYRIGHT;**  
**AND CONFIDENTIAL FINDINGS**

**9.1 DUTY OF CARE**

With respect to the performance of the Services contemplated herein, Consultant shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable work and/or services.

**9.2 COMPLIANCE WITH APPLICABLE LAWS**

In its performance of the Services, Consultant shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

**9.3 PATENT RIGHTS; COPYRIGHT; CONFIDENTIAL FINDINGS**

Any work product arising out of this Agreement, as well as all information specifications, processes, data and findings, are intended to be the property of the City and shall not otherwise be made public and/or disseminated by Consultant, without the prior written consent of the City Manager, excepting any information, records etc. which are required to be disclosed pursuant to Court Order and/or Florida Public Records Law.

All reports, documents, articles, devices, and/or work produced in whole or in part under this Agreement are intended to be the sole and exclusive property of the City, and shall not be subject to any application for copyright or patent by or on behalf of the Consultant or its employees or sub-consultants, without the prior written consent of the City Manager.

**SECTION 10**  
**GENERAL PROVISIONS**

**10.1 AUDIT AND INSPECTIONS**

Upon reasonable verbal or written notice to Consultant, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the City Manager may deem to act on the City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. Consultant shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

**10.2 INSPECTOR GENERAL AUDIT RIGHTS**

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- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the Consultant, the Consultant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Consultant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Consultant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and

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performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

- i. If this Agreement is completely or partially terminated, the Consultant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
  - ii. The Consultant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Consultant, its officers, agents, employees, subcontractors and suppliers. The Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Consultant in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Consultant or third parties.

### **10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING**

Consultant shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this section, and any attempt to make such assignment (unless approved) shall be void.

### **10.4 PUBLIC ENTITY CRIMES**

Prior to commencement of the Services, the Consultant shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

### **10.5 NO DISCRIMINATION**

In connection with the performance of the Services, the Consultant shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Consultant shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

## **10.6 CONFLICT OF INTEREST**

Consultant herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, as may be amended from time to time; and by the City of Miami Beach Charter and Code, as may be amended from time to time; both of which are incorporated by reference as if fully set forth herein.

Consultant covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. Consultant further covenants that in the performance of this Agreement, Consultant shall not employ any person having any such interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

## **10.7 CONSULTANT'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

- (A) Consultant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Consultant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Consultant shall:
  - (1) Keep and maintain public records required by the City to perform the service;
  - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Consultant does not transfer the records to the City;
  - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.



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(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

- (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Consultant of the request, and the Consultant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- (2) Consultant's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

(E) CIVIL ACTION.

- (1) If a civil action is filed against a Consultant to compel production of public records relating to the City's contract for services, the court shall assess and award against the Consultant the reasonable costs of enforcement, including reasonable attorneys' fees, if:
  - a. The court determines that the Consultant unlawfully refused to comply with the public records request within a reasonable time; and
  - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Consultant has not complied with the request, to the City and to the Consultant.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Consultant at the Consultant's address listed on its contract with the City or to the Consultant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) A Consultant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411**

10.8 **FORCE MAJEURE**

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- (A) A “Force Majeure” event is an event that (i) in fact causes a delay in the performance of the Consultant or the City’s obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.
- (B) If the City or Consultant’s performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.
- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City’s payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party’s performance under the Agreement for a time period

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greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Consultant of such termination. If the Agreement is terminated pursuant to this section, Consultant shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

## **10.9 E-VERIFY**

- (A) Consultant shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Consultant shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Consultant shall expressly require any subconsultant performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant during the contract Term. If Consultant enters into a contract with an approved subconsultant, the subconsultant must provide the Consultant with an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an unauthorized alien. Consultant shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.
- (B) **TERMINATION RIGHTS.**
- (1) If the City has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Consultant for cause, and the City shall thereafter have or owe no further obligation or liability to Consultant.
  - (2) If the City has a good faith belief that a subconsultant has knowingly violated the foregoing Subsection 10.9(A), but the Consultant otherwise complied with such subsection, the City will promptly notify the Consultant and order the Consultant to immediately terminate the Agreement with the subconsultant. Consultant's failure to terminate a subconsultant shall be an event of default under this Agreement, entitling City to terminate the Consultant's contract for cause.
  - (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
  - (4) The City or Consultant or a subconsultant may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
  - (5) If the City terminates the Agreement with Consultant under the foregoing Subsection (B)(1), Consultant may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
  - (6) Consultant is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

## **SECTION 11 NOTICES**

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Until changed by notice, in writing, all such notices and communications shall be addressed as follows:

**TO CONSULTANT:**                   **[FILL IN]**

**TO CITY:**                               **[FILL IN]**

All notices mailed electronically to either party shall be deemed to be sufficiently transmitted.

**SECTION 12**  
**MISCELLANEOUS PROVISIONS**

**12.1 CHANGES AND ADDITIONS**

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**12.2 SEVERABILITY**

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**12.3 WAIVER OF BREACH**

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's 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.

**12.4 JOINT PREPARATION**

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express 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.

**12.5 ENTIRETY OF AGREEMENT**

The City and Consultant agree that this is the entire agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not

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contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

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SAMPLE

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

**CITY OF MIAMI BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

FOR CONSULTANT:

**[INSERT NAME]**

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

Date: \_\_\_\_\_