



**AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR
_____ (RFP # _____)**

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and _____, a _____ corporation ("SECOND PARTY [SUBSTITUTE NAME OR ACRONYM AND REPLACE THROUGHOUT]") (collectively referred to as the "Parties").

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

ARTICLE 1. DEFINITIONS

- 1.1 **Board.** The Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator.** The Director of _____ [, or Assistant Director of _____].
- 1.3 **County Administrator.** The administrative head of County appointed by the Board.
- 1.4 **County Attorney.** The chief legal counsel for County appointed by the Board.
- 1.5 **County Business Enterprise or "CBE."** A small business certified as meeting the requirements of Broward County's CBE Program, per Section 1-81 of the Broward County Code of Ordinances.
- 1.6 **Notice To Proceed.** A written authorization to proceed with the project, phase, or task thereof, issued by the Contract Administrator.
- 1.7 **Services.** All work required by Second Party under this Agreement, including without limitation all deliverables, consulting, training, project management, or other services specified in Exhibit A.
- 1.8 **Subconsultant or Subcontractor.** A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing services to County through Second Party for all or any portion of the advertised work. The term "Subconsultant" shall include all "Subcontractors" and the term "Subcontractor" shall include all "Subsconsultants."

ARTICLE 2. SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement including without limitation Exhibit A. The Scope of Services stated in this Agreement 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 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 set forth in this Agreement or, to the extent applicable, the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code). To the extent any goods or services under this Agreement, or the quantity thereof, are optional ("Optional Services"), County may select the type, amount, and timing of such goods or services pursuant to a Work Authorization (Exhibit H hereto) executed by Second Party and County pursuant to this Section, provided that no such selection, when combined with those goods or services required under the Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Section 4.1.

2.3 Notwithstanding anything to the contrary in the Agreement, Work Authorizations for Optional Services shall be executed on behalf of County as follows: (a) the Contract Administrator may execute any Work Authorization for which the total cost to County is less than \$30,000.00; (b) the Purchasing Director may execute any Work Authorization for which the total cost to County is within the Purchasing Director's delegated authority; and (c) any Work Authorizations above the County's Purchasing Director delegated authority shall require Board approval. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. Second Party shall not commence work on any Work Authorization until after receipt of a Notice to Proceed.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall begin on the date it is fully executed by the Parties and shall end on [REDACTED] ("Initial Term"). The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of Second Party required by this Agreement shall be completed no later than [REDACTED]. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

3.3 In the event County elects to extend the term of this Agreement beyond the Initial Term, Second Party agrees that it shall continue to provide the Services upon the same terms and conditions as contained in this Agreement for such extended period, which shall not be more than three (3) months beyond the Initial Term. Second Party shall be compensated for the Services at the rate in effect when the extension was invoked by County. This option, if elected by County, shall be exercised by County's Purchasing Director upon by written notice stating the

duration of the extended period which notice shall be provided to Second Party at least thirty (30) days prior to the end of the Initial Term.

ARTICLE 4. COMPENSATION

4.1 For the Initial Term, County will pay Second Party up to a maximum amount as follows:

Services/Goods	Not-To-Exceed Amount
Services	\$
Optional Services	\$
Reimbursables	\$
TOTAL NOT TO EXCEED	\$

Payment shall be made only for work actually performed and completed pursuant to this Agreement, as set forth in Exhibit B (Payment Schedule), which amount shall be accepted by Second Party as full compensation for all such work. Second Party acknowledges that the amounts set forth herein are the maximum amounts payable and constitute a limitation upon County's obligation to compensate Second Party for its work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Second Party's obligation to perform all items of work required under this Agreement. Unless otherwise expressly stated in this Agreement, Second Party shall not be reimbursed for any expenses it incurs under this Agreement.

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 or is otherwise terminated. Invoices shall designate the nature of the Services performed and, as applicable, the personnel, hours, tasks, or other detail as requested by the Contract Administrator. 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 supplier listed on the form, explaining the good cause why payment has not been made.

4.2.2 Any invoice by Second Party shall be in the amount set forth in Exhibit B for the applicable Services, minus any agreed upon retainage as stated in Exhibit B. Retainage amounts shall only be invoiced to County upon completion of all Services under the Agreement, unless otherwise stated in Exhibit B.

4.2.3 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," Section 1-51.6, Broward County Code of Ordinances. 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.

4.2.4 Second Party shall pay its Subcontractors and suppliers within fifteen (15) days following receipt of payment from County for such subcontracted work or supplies. Second Party agrees that if it withholds an amount as retainage from Subcontractors or suppliers, it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless Second Party demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor or supplier.

4.3 Reimbursables. For reimbursement of any travel costs or travel-related expenses permitted under this Agreement, Second Party agrees to adhere to Section 112.061, Florida Statutes, except to the extent, if any, that Exhibit B expressly provides to the contrary. County shall not be liable for any such expenses that have not been approved in advance, in writing, by the Contract Administrator.

4.4 Subcontractors. Second Party shall invoice all Subcontractor fees, whether paid on a "lump sum" or other basis, to County with no markup. All Subcontractor fees shall be billed in the actual amount paid by Second Party.

4.5 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.

4.6 Payment shall be made to Second Party at the address designated for Notices under Section 9.8.

ARTICLE 5. INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Second Party, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement.

In the event any Claim is brought against an Indemnified Party, Second Party shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The 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. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. INSURANCE

6.1 Second Party shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit G in accordance with the terms and conditions stated in this Article.

6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name Broward County as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is "Broward County." This official title shall be used in all insurance documentation.

6.3 Within fifteen (15) days of notification of award, Second Party shall provide to County proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. Second Party shall provide certified copy of any policies required by the Article upon request by County. Coverage is not to cease and is to remain in force until County determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of all Services unless a different time period is stated in Exhibit G. County shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to County upon expiration.

6.4 If Second Party uses a Subcontractor, Second Party shall ensure that each Subcontractor names "Broward County" as an additional insured under the Subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

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 receipt of 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 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, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, 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. The Agreement may also be terminated for cause if Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:

7.2.1 Upon the disqualification of Second Party as a CBE by County's Director of Office of Economic and Small Business Development ("OESBD") if Second Party's status as a CBE 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 OESBD due to fraud, misrepresentation, or material misstatement by Second Party in the course of obtaining this Agreement or attempting to meet the CBE contractual obligations;

7.2.3 Upon the disqualification of one or more of Second Party's CBE participants by County's Director of the OESBD if any such participant's status as a CBE 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 CBE participants by County's Director of the OESBD if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement; or

7.2.5 If Second Party is determined by County's Director of the OESBD to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE 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 by County, 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 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 CBE COMPLIANCE

8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Second Party shall comply with all applicable requirements of the County's CBE Program as established by Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances (the "Act"), in the award and administration of this Agreement.

Second Party shall include the foregoing or similar language in its contracts with any Subcontractors, 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.

Failure by Second Party to carry out any of the requirements of this Section shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

8.2 Second Party acknowledges that the Board, acting through the OESBD, may make minor administrative modifications to the CBE 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.

County may add or increase the required participation of CBE firms under this Agreement in connection with any 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 more. Second Party shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the OESBD.

8.3 Second Party will meet the following CBE participation goal by utilizing the CBE firms for the following percentage of Services under this Agreement:

CBE participation goal	<input type="text" value=""/>
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Second Party stipulates that each CBE firm utilized to meet the CBE participation goal must be certified by the OESBD. Second Party shall inform County immediately when a CBE firm is not able to perform or if Second Party believes the CBE firm should be replaced for any other reason, so that the OESBD may review and verify the good faith efforts of Second Party to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, including cause, Second Party shall provide written notice to the OESBD and shall substitute another CBE firm in order to maintain the level of CBE participation required herein, unless otherwise provided herein or agreed in writing by the parties. Such substitution shall not be required in the event the termination results from County modifying the scope of Services and there is no available CBE to perform the new Scope of Services, in which event Second Party shall notify County and the OESBD may adjust the CBE participation goal by written notice to Second Party. Second Party may not terminate for convenience a CBE firm without County's prior written consent, which consent shall not be unreasonably withheld.

8.4 In performing the Services, the Parties hereby incorporate the list of Second Party's participating CBE firms, addresses, scope of work, and the percentage of work amounts identified on each Letter of Intent into this Agreement (Exhibit D). Promptly upon execution of this Agreement by County, Second Party shall enter into a formal contract with the CBE firms listed in Exhibit D and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

8.5 Second Party shall provide written monthly reports to the Contract Administrator attesting to Second Party's compliance with the CBE participation goals stated in this Article 8. In addition, Second Party shall allow County to engage in on-site reviews to monitor Second Party's progress in achieving and maintaining its contractual and CBE Program obligations. Such

review and monitoring shall be by the Contract Administrator in conjunction with the OESBD, unless otherwise determined by the County Administrator. 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.

8.6 In the event of Second Party's noncompliance with its CBE participation goal (including without limitation the unexcused reduction of a CBE firm's participation), the affected CBE firm shall have the right to exercise any remedies as may be available as between the CBE firm and the Second Party.

8.7 The 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 all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Second Party's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

8.8 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. 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.

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. Any compensation due to Second Party shall be withheld until all documents are received as provided herein. Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

9.2 Public Records. County is a public agency subject to Chapter 119, Florida Statutes. To the extent Second Party is a contractor acting on behalf of County pursuant to Section 119.0701, Florida Statutes, Second Party shall:

9.2.1 Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by County were County performing the services under this Agreement;

9.2.2 Provide the public with access to such public records on the same terms and conditions that County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

9.2.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

9.2.4 Meet all requirements for retaining public records and transfer to County, at no cost, all public records in possession of Second Party upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

The failure of Second Party to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement and County shall enforce the default in accordance with the provisions set forth in Section 7.1. Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

9.3 Audit Rights, 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 Agreement. 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 Agreement and performance thereunder. 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 within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this Section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at Second Party's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

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. If an audit or inspection in accordance with this Section discloses overpricing or overcharges to County of any nature by the Second Party in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of the County's audit shall be reimbursed to the County by the Second Party in addition to making adjustments for the overcharges. Any adjustments and/or

payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to Second Party.

Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

9.4 Truth-In-Negotiation Representation. Second Party's compensation under this Agreement is based upon representations supplied to County by Second Party, and Second Party certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.5 Public Entity Crime Act. Second Party represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Second Party further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, 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. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Second Party under this Agreement.

9.6 Independent Contractor. Second Party is an independent contractor under this Agreement. In providing Services under this Agreement, neither Second Party nor its agents shall act as officers, employees, or agents of County. Second Party shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

9.7 Third Party Beneficiaries. Neither Second Party nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge 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.

9.8 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

FOR COUNTY:

Broward County [REDACTED]

Attn: [REDACTED]

Governmental Center, Room [REDACTED]

115 South Andrews Avenue

Fort Lauderdale, Florida 33301

Email address: [REDACTED]

FOR SECOND PARTY:

[REDACTED]
[REDACTED]
[REDACTED]

Email address: [REDACTED]

9.9 Assignment and Performance. Except for subcontracting approved in writing by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Second Party without the prior written consent of County. If Second Party violates this provision, County shall have the right to immediately terminate this Agreement. Second Party represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. Second Party agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

9.10 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. None of Second Party's 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, 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 any way 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 shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

9.11 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and 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.

9.12 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.

9.13 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

9.14 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

9.15 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.16 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 9 of this Agreement, the provisions contained in Articles 1 through 9 shall prevail and be given effect.

9.17 Law, 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. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **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. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS'**

FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.18 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 or otherwise authorized to execute same on their behalf.

9.19 Prior Agreements. This Agreement represents the final and complete understanding of the parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

9.20 HIPAA Compliance. It is expressly understood by the Parties that County personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 CFR §160, 162, and 164 and related regulations. In the event Second Party is considered by County to be a covered entity or business associate 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. Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractors.

9.21 Payable Interest

9.21.1 Payment of Interest. County shall not be liable to pay any interest to Second Party 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 arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

9.21.2 Rate of Interest. If, for whatever reason, the preceding subsection is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible

under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

9.22 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

9.23 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.

9.24 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, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. 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.

9.25 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

9.26 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of Section 16½-157 of the Broward County Code of Ordinances, which requires County contractors to provide benefits to domestic partners of their employees, Second Party agrees to fully comply with Section 16½-157 during the entire term of the Agreement. If Second Party fails to fully comply with that section, such failure shall constitute a material breach which shall allow County to exercise any remedy available under this Agreement, under applicable law, or under section 16½-157. For that purpose, the contract language referenced in Section 16½-157 is incorporated herein as though fully set forth in this paragraph.

9.27 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 workplace 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 has a drug-free workplace program in accordance with Section 287.087, Florida Statutes, and Chapter 21.31(a)(2) of the Broward County Procurement Code, and that it will maintain such drug-free workplace program for the full term of this Agreement.

9.28 Contingency Fee. Second Party represents that it has not paid or agreed to pay any person or entity, 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. If County learns that this representation is false, County

shall have the right to terminate this Agreement without any further liability to Second Party. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Second Party under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

9.29 Living Wage Requirement. If Second Party is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Broward County Code Sections 26-100 et seq., 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. 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.

[DELETE IF NOT A "COVERED CONTRACT" AT TIME OF CONTRACT AWARD]

9.30 Workforce Investment Program. This Agreement constitutes a "Covered Contract" under the Broward Workforce Investment Program, Broward County Administrative Code Section 19.211 ("Workforce Investment Program"). Second Party affirms it is aware of the requirements of the Workforce Investment Program and agrees to use good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal as set forth therein, including by (a) publicly advertising any vacancies that are the direct result of this Agreement (whether those vacancies are with Second Party or its Subcontractors) exclusively with CareerSource Broward for at least five (5) business days and using good faith efforts to interview any qualified candidates referred under the Workforce Investment Program, and (b) using good faith efforts to hire Qualifying New Hires, as defined by the Workforce Investment Program, for at least fifty percent (50%) of the vacancies that are the direct result of this Agreement. Until at least one year after the conclusion of this Agreement, Second Party shall maintain and make available to County upon request all records documenting Second Party's compliance with the requirements of the Workforce Investment Program, and shall submit the required Workforce Investment Reports to the Contract Administrator annually by January 31 and within thirty (30) days after the conclusion of this Agreement. Failure to demonstrate good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal shall constitute a material breach of this Agreement.

9.31 Use of County Logo. Second Party shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

(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 [redacted] day of [redacted], 20[redacted], and Second Party, signing by and through its [redacted], 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: _____
[redacted] day of [redacted], 20[redacted]

Insurance requirements approved by Broward
County
Risk Management Division:

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: _____

By: _____
[Name] (Date)
Assistant County Attorney

Name: _____

Title: _____

By: _____
[Name] (Date)
Deputy County Attorney

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_____.doc
12/12/14
#____

AGREEMENT BETWEEN BROWARD COUNTY AND [REDACTED] FOR

[REDACTED]

SECOND PARTY

WITNESSES:

By _____, President

_____ day of _____, 20____

(SEAL)

Exhibit A – Scope of Services

Second Party and County agree that Second Party shall provide the following Services under this Agreement:

1. Project Request

[Identify in common business language County's need and the functionality and solution provided by the Software and related services.]

2. Services Description

3. Technical Approach

A. **Phases.** The Services will be provided in the following Phases:

B. **Implementation.**

C. **Equipment.**

a. Second Party shall provide the following equipment:

- [Itemize equipment]
-

b. County shall provide the following equipment:

- [Itemize equipment]
-

4. Managerial Approach

Second Party will ensure that the persons responsible for Second Party's performance of the Services under this Agreement and, to the extent applicable, identified below (collectively "Key Personnel") are appropriately trained and experienced and have adequate time and resources to perform in accordance with the terms of this Agreement. To the extent Second Party seeks or is required to make any change to the composition of the Key Personnel, Second Party will provide County with thirty (30) days' advance notice (or as much advance notice as is possible if thirty (30) days' notice is not possible) regarding such changes and the management plan associated with such changes. County shall not be responsible for any additional costs associated with a change in Key Personnel.

The Key Personnel shall be as follows:

[LIST KEY PERSONNEL FOR SECOND PARTY]

The following training will be provided as part of the Services under this Agreement:

[LIST TRAINING COURSES, TYPES (e.g., "train the trainer"), MAX. HOURS/ATTENDEES, ETC.]

[Add any other provisions for how the project will be managed to a successful conclusion.]

5. Communication & Reports

[Establish an effective way to communicate the current project status and to share pertinent information. Project leads should provide a brief status report that details the progress of tasks along with an updated Project Schedule. All individual reports and schedules should be combined into a master version to generate an overall initiative status report.]

A. Meetings/Communication

B. Required Reporting

6. Deliverable Products and Services

Deliverable	Format / Stage	Duration/Deadline	Acceptance Criteria
Phase 1			

Deliverable	Format / Stage	Duration/Deadline	Acceptance Criteria
Phase 2			

Deliverable	Format / Stage	Duration/Deadline	Acceptance Criteria
Phase 3			

Deliverable	Format / Stage	Duration/Deadline	Acceptance Criteria
Phase 4 – Final Acceptance			

7. **Optional Services:**

[This section spells out any optional services County may seek to purchase]

a. Additional Services

b. Additional Equipment/Goods

Project Schedule

The Phases and schedule for the Services are presented below.

ACTIVITY	DATE REQUIRED OR ESTIMATED TIME PERIOD	
Project Kick-Off	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
Phase I:	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
Phase II:	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
Phase III:	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
Phase IV:	0 Days	<input type="checkbox"/> Undetermined
	0 Days	<input type="checkbox"/> Undetermined
Final Completion Date:	0 Days	<input type="checkbox"/> Undetermined

Exhibit B – Payment Schedule

The rates specified below shall be in effect for the entire term of the Agreement, including any renewal or extension term(s), unless otherwise expressly stated below. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the costs and fees expressly provided for in this Exhibit B.

Table A: Deliverables/Phases Payment

Description	Retainage	Total Deliverable Amount (including retainage)
Deliverable 1: _____	__%	\$
Deliverable 2: _____	__%	\$

Deliverables shall only be invoiced upon satisfactory completion of the applicable Deliverable as evidenced by written approval by the Contract Administrator. The invoice amount shall be the Total Deliverable Amount minus the applicable Retainage.

Table B: Hourly Services/Payment

Staff/Personnel	Rate per Hour
Title/Role	\$___/hour
Title/Role	\$___/hour

Table C: Deliverable Not to Exceed Amounts

Phase/Service	Deliverable	Rate	Retainage (if applicable)	Not-to Exceed Amount (including retainage)
Phase I	Pre-Project Training	Hourly Fee per Table B	10%	\$10,000

Phase I	Kick-off	Fixed Fee per Table A	10%	\$2,500
Phase II				

Table D: Reimbursables (subject to Florida Statutes Section 112.061)

Reimbursable	Not-to-Exceed
Travel	\$_____
Per Diem (meals, lodging, etc.)	\$_____
Printing, reproduction, or photography	\$_____
Testing costs	\$_____
Fees paid to regulatory agencies	\$_____
Other miscellaneous expenses	\$_____

[Include the following Prevailing Wage Rates section if this Project is not federally funded and for construction services in excess of \$250,000]

Prevailing Wage Rates: Pursuant to Section 26-5, Broward County Code of Ordinances:

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).

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.

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.

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.

5. These provisions shall apply to the Second Party and any Subcontractors.

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.

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.

8. The Contract Administrator may withhold or cause to be withheld from Second Party as 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.

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 Section 26-5, Broward County Code of Ordinances, 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

LETTERS OF INTENT

[Applicable when agreement has assigned CBE goals]

Second Party represents that the CBE participants referenced in the attached Letters of Intent have agreed by written subcontract to perform the percentage of work amounts set forth and that the following information regarding participating Subcontractors is true and correct to the best of his/her knowledge.

EXHIBIT E
BUSINESS ASSOCIATE AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA AND [REDACTED]

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and [REDACTED], a [REDACTED] corporation authorized to do business in the State of Florida with its principal office located at [REDACTED] ("Business Associate") in connection with the [REDACTED] (the "Agreement").

RECITALS

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information ("PHI");
2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH");
3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and
4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1: Definitions

- 1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 CFR Parts 160, 162, 164, and 42 U.S.C. § 17921.
- 1.2 "HIPAA Laws" mean collectively HIPAA, HITECH, 42 CFR Part 2 (if applicable), and the related regulations and amendments.
- 1.3 When the term "PHI" is used in this BAA, it includes the term "Electronic Protected Health Information" or "E PHI."
- 1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending on the type of violation. In determining penalties, the Secretary may take into account:
 - a. the nature and extent of the violation;
 - b. the nature and extent of harm resulting from such violation;

- c. the degree of culpability of the covered entity or business associate;
- d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
- e. the financial condition of the covered entity or business associate, and
- f. such other matters as justice may require.

Section 2: Confidentiality

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI.
- 2.2 If this box is checked, the County and Business Associate are required to comply with 42 CFR Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

Section 3: Obligations and Activities of the Business Associate

Use and Disclosure of PHI

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
 - a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
 - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;

- d. Use PHI to provide data aggregation activities relating to the operations of the County; and
 - e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.
- 3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.
- 3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

Administrative, Physical, and Technical Safeguards

- 3.4 Business Associate shall implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.
- 3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

Access of Information; Amendment of Information; Accounting of Disclosures

- 3.6 Business Associate shall make available to the County all PHI in Designated Record Sets within ten (10) days of the County's request for the County to meet the requirements under 45 CFR § 164.524.
- 3.7 Business Associate shall make any amendments to PHI in a Designated Record Set as directed or agreed to by the County pursuant to 45 CFR § 164.526 in the time and manner reasonably designated by the County.
- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.

- 3.9 Business Associate shall 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 and HIPAA Laws.

Mitigation

- 3.10 Business Associate shall mitigate, to the extent possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.
- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within twenty-four (24) hours of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable, unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate.
- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) business days after initial notification, and shall document the following:
- a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;
 - b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;

- c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.)
 - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
 - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
 - f. Contact procedures for the Business Associate to enable individuals to ask questions or learn additional information, which may include, in the discretion of the County, a toll-free telephone number, e-mail address, website, or postal address, depending upon the available contact information that the Business Associate has for the affected individuals; and
 - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, in consultation with and at the direction of the County, assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable, any harmful effect of such breach known to Business Associate.
- 3.15 The County, in its sole discretion, will determine whether the County or Business Associate shall be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media.
- a. Notification will be by first-class mail, or by electronic mail, if the individual has specified notice in the manner as a preference.
 - b. Information may be posted on the County and Business Associate's website where the Business Associate experienced, or is reasonably believed to have experienced, an impermissible use or disclosure of unsecured PHI that compromised the security or privacy of more than ten (10) individuals when no other current information is available to inform such individuals.
 - c. Notice shall be provided to prominent media outlets with information on an incident where the Business Associate experienced an impermissible use and disclosure of

unsecured PHI that compromised the security or privacy of more than five hundred (500) individuals within the same state or jurisdiction during the incident.

- d. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County, individuals, and their representatives of any security or privacy breach that should be reported by Business Associate to the County. Business Associate also agrees to pay the costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.
- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws in the event of a violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available to the County Contract Grants Administrator within five (5) business days of the Agreement.
- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the County or to the Secretary of HHS or its designee within five (5) business days of request for the purposes of determining the Business Associate's compliance with HIPAA Laws.

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 the Business Associate's use of PHI.

- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI.
- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

Section 5: Term and Termination

Term

- 5.1 The term of this BAA shall be effective upon execution by all Parties, and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.

Termination

- 5.2 Upon the County's knowledge of a material breach of this BAA by Business Associate, the County shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or terminate this BAA and the Agreement if the Business Associate does not cure the breach within the time specified by the County;
 - b. Immediately terminate this BAA and the Agreement if Business Associate has breached a material term of this BAA and a cure is not possible; or
 - c. If neither termination nor cure is feasible, the County's HIPAA Privacy Official shall report the violation to the Secretary of HHS.

Effect of Termination

- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received or processed pursuant to the Agreement. No PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.

- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this Section shall survive termination of this BAA.

Section 6: Miscellaneous

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the County to comply with HIPAA Laws.

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

BUSINESS ASSOCIATE AGREEMENT TO EXISTING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA AND BUSINESS ASSOCIATE, ENUMERATING THE RESPONSIBILITIES OF EACH REGARDING COMPLIANCE WITH HIPAA LAWS.

WHEREAS, the parties have made and executed this Business Associate Agreement between BROWARD County and BUSINESS ASSOCIATE, on the respective dates under each signature: BROWARD County through its County Administrator, authorized to execute same, and BUSINESS ASSOCIATE signing by and through its _____, duly authorized to execute same.

COUNTY

BROWARD County, through its
County Administrator

BY _____

____ day of _____, 20__.

Approved as to form by

Office of the County Attorney
Broward County, Florida
Joni Armstrong Coffey,
County Attorney
Governmental Center, Suite #423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Assistant County Attorney (Date)

BUSINESS ASSOCIATE

BUSINESS ASSOCIATE

By: _____

Print

Title: _____

____ day of _____, 20____.

STATE OF _____)

) SS

County OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____, of the _____, who is personally known to me or who has produced _____ as identification.

Print Name:
Notary Public, State of
Commission No.

Commission Expires:

EXHIBIT F
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RLI/Bid/Contract No. _____

Project Title _____

The undersigned Second Party hereby swears under penalty of perjury that:

1. Second Party has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 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 supplier's name and address	Date of disputed invoice	Amount in dispute

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

Dated _____, 20__

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; printed/typed/stamped)

My commission expires:

EXHIBIT G
INSURANCE CERTIFICATE

EXHIBIT H
WORK AUTHORIZATION FORM

Contract: _____

Work Authorization No. _____

Contract Administrator
Award Authority for Optional Services

This Work Authorization is between Broward County and _____ as required pursuant to the Agreement, executed on _____. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

Services to be provided: [DESCRIBE IN DETAIL]

Contract at issue is ___ Lump Sum/ ___ Not-to-Exceed for amount: \$ _____

The time period for this Work Authorization will consist of ____ (____) calendar days unless otherwise set forth in an attached quotation.

Fee Determination: Payment for services under this Work Authorization is as follows:

Professional Services	\$ _____
General Services	\$ _____
Equipment/Hardware	\$ _____
Total Maximum Cost of this Work Authorization	\$ _____

County

Project Manager

Date

Contract Administrator

Date

Board and/or Designee

Date

VENDOR

Attest:

Signed: _____

Typed Name: _____

Title: _____

OPTIONAL AND SUBSTITUTE PROVISIONS

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 shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

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 this Agreement.

Substitute for Sections 8.2 - 8.7 when there is no CBE goal set:

8.2 Although no CBE goal has been set for this Agreement, County encourages Second Party to give full consideration to the use of CBE firms to perform work under this Agreement.

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

9.0 Financial Statements and Management Letters. Second Party shall provide to the Contract Administrator annual financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year County funds are received and for each subsequent fiscal year until such time as all of County funds are expended and any management letter(s) thereby generated. 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 one hundred twenty (120) 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.

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.

Second Party acknowledges submission of required documents 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 governmental entities:

9.0 Financial Statements And Management Letters. Second Party shall provide a copy of Second Party's audited financial statements and any applicable management letter(s) as well as Second Party's response to any management letter(s). The audit of the financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year County funds are received and for each subsequent fiscal year until such time as all of County funds are expended.

Second Party shall provide to County's Contract Administrator copies of a special report showing 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 as nearly in accordance with generally accepted auditing standards as the status of the internal auditor permits, realizing that the internal auditor may not issue the opinions required therein. The special report is to be filed with Second Party's governing body.

Second Party shall submit the documents required by 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, unless otherwise approved by the Contract Administrator in writing.

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.