

AGREEMENT BETWEEN BROWARD COUNTY AND SHARP MARKETING FOR DISTRIBUTION OF PROMOTIONAL ITEMS (RFP # GEN2116293P1)

This Agreement (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and Sharp Marketing LLC, a Florida limited liability company (“Contractor”) (collectively referred to as the “Parties”).

RECITALS

A. The Greater Fort Lauderdale Convention & Visitors Bureau (“GFLCVB”), an agency of County, and other County agencies sought a qualified primary vendor to provide branding and sourcing of promotional products for distribution, and to maintain and operate e-commerce websites to sell such products to and on behalf of County and the GFLCVB.

B. County issued a Request for Proposals (RFP #GEN21162931P1) seeking proposals from firms offering to provide the products and services for County, and Contractor’s proposal was first-ranked and selected by County’s evaluation committee.

C. Following negotiations between the Parties pertaining to the subject matter of this Agreement, the results of which negotiations are incorporated herein, the Parties desire to enter into this Agreement for Contractor for provide the products and services required by County.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Apparel** means clothing items County requests Contractor make available for sale or distribution via the E-Commerce Site or through direct ordering by County, which items may (in County’s sole discretion) include County’s logo or other intellectual property marks.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida.

1.3. **Contract Administrator** means the President of the GFLCVB, or such other person designated by same in writing.

1.4. **County Business Enterprise** or **CBE** means a small business certified as meeting the requirements of Section 1-81, Broward County Code of Ordinances.

1.5. **Direct Purchase Order** means a written order signed by both County and Contractor in substantially the form of Exhibit D to purchase Apparel or Promotional Items, or to create new County websites within the E-Commerce Website.

1.6. **E-Commerce Website** means one or more websites created by Contractor, in consultation with County, that allows County, its agencies, employees, and/or members of the general public to order Apparel, Promotional Items, and any other items that County authorizes Contractor to make available for purchase and distribution. The current websites that are included in the definition of E-Commerce Website are sunny.org and browardcountystore.com.

1.7. **Promotional Items** means items County requests Contractor make available for sale or distribution via the E-Commerce Site or through direct ordering by County, which items may (in County's sole discretion) include County's logo or other intellectual property marks.

1.8. **Purchasing Director** means County's Director of Purchasing as appointed by the Broward County Administrator.

1.9. **Services** means all work required by Contractor under this Agreement, including without limitation all services specified in Exhibits A or F.

1.10. **Subcontractor** means an entity or individual providing services to County through Contractor for all or any portion of the work under this Agreement. The term "Subcontractor" shall include all sub-consultants.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A	Scope of Services
Exhibit A-1	Schedule of Apparel and Promotional Items
Exhibit B	Payment Schedule
Exhibit C	Minimum Insurance Coverages
Exhibit D	Direct Purchase Order Form
Exhibit E	CBE Subcontractor Schedule and Letters of Intent
Exhibit F	ETS Security Requirements and Service Level Agreement
Exhibit G	Certification of Payments to Subcontractors and Suppliers

ARTICLE 3. SCOPE OF SERVICES

3.1. Scope of Services. Contractor shall perform all Services, which include, without limitation, the work specified in Exhibit A (the "Scope of Services"). The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable. Contractor shall further comply with the ETS Security Requirements attached hereto and incorporated herein as Exhibit F.

3.2. Scope Changes; Direct Purchase Orders. Contractor 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, set forth in the Broward County Procurement Code. In addition to purchases made via the E-Commerce Website, County may purchase Apparel and Promotional Items via a Direct Purchase Order in substantially the form attached as Exhibit D executed by Contractor and County pursuant to this section, provided that no such selection, when combined with items purchased by County under this Agreement including via the E-Commerce Website, would result in a payment obligation exceeding the applicable maximum amount stated in Section 5.1. Notwithstanding anything to the contrary in this Agreement, Direct Purchase Orders shall be executed on behalf of County as follows: (a) the Contract Administrator may execute Direct Purchase Orders for which the total cost to County in the aggregate is less than \$50,000.00; (b) the Purchasing Director may execute Direct Purchase Orders for which the total cost to County in the aggregate is within the Purchasing Director's delegated authority; and (c) any Direct Purchase Order above the Purchasing Director's delegated authority requires express approval by the Board. Subsequent to the full execution of any Direct Purchase Order, Contractor shall provide the requested Apparel or Promotional Items and shall invoice for same as provided in Article 5.

3.3. Non-Exclusive Relationship. Contractor acknowledges that this Agreement is non-exclusive in nature and County retains the right to purchase Apparel and Promotional Items elsewhere during the Term, in its sole and absolute discretion.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall end at the conclusion of the third (3rd) year after the Effective Date ("Initial Term"). The Initial Term plus all Extension Terms actually exercised by County and any Additional Extension as provided in Section 4.3 are collectively referred to as the "Term."

4.2. Extensions. County shall have the option to renew this Agreement for up to two (2) additional one (1) year terms (each an "Extension Term") by sending written notice of renewal to Contractor at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise this renewal option.

4.3. Additional Extension. In the event unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of an Extension Term not practicable, or if no extension is available and expiration of this Agreement would, as determined by the Purchasing Director, result in a gap in the provision of services necessary for the ongoing operations of County, then the Purchasing Director may extend this Agreement on the same terms and conditions for period(s) not to exceed six (6) months in the aggregate, provided that any such extension is within the authority of the Purchasing Director or otherwise authorized by the Board. The Purchasing Director may exercise this option by written notice stating the duration of the extended period, which notice shall be provided to Contractor at least thirty (30) days prior to the end of the then-current term.

4.4. Extension Rates and Terms. For any extension period(s) after the Initial Term, Contractor shall be compensated at the rates in effect when the extension was invoked by County, unless otherwise expressly stated in Exhibit B. Contractor shall continue to provide the Services upon the same terms and conditions as set forth in this Agreement for such extended period.

4.5. Fiscal Year. 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.

4.6. Time of the Essence. Time is of the essence for Contractor to perform the Services and all other duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. COMPENSATION

5.1. Maximum Amounts. For all goods and services provided under this Agreement, County will pay Contractor in accordance with Exhibit B up to a maximum amount as follows:

5.1.1. GFLCVB Maximum Amounts:

Costs for Promotional Items, Apparel, and any E-Commerce Website Domain Registrations	Not-To-Exceed Amount
Per Year During Initial Term	\$400,000.00
Per Annual Extension Term	\$400,000.00
TOTAL NOT TO EXCEED FOR TERM (UP TO 5 YEAR TERM)	\$2,000,000.00

5.1.2. Other County Agencies Aggregate Maximum Amounts:

Costs for Promotional Items, Apparel, and any E-Commerce Website Domain Registrations	Not-To-Exceed Amount
Per Year During Initial Term	\$250,000.00
Per Annual Extension Term	\$250,000.00
TOTAL NOT TO EXCEED FOR TERM (UP TO 5 YEAR TERM)	\$1,250,000.00

5.1.3. Aggregate Maximum Amounts (combined 5.1.1 and 5.1.2):

Costs for Promotional Items, Apparel, and any E-Commerce Website Domain Registrations	Not-To-Exceed Amount
Per Year During Initial Term	\$650,000.00
Per Annual Extension Term	\$650,000.00
TOTAL NOT TO EXCEED FOR TERM (UP TO 5 YEAR TERM)	\$3,250,000.00

Payment shall be made only for Apparel, Promotional Items, and Direct Purchase Orders actually ordered pursuant to this Agreement, in the amounts or utilizing the calculations set forth in Exhibit B (Payment Schedule), which amount shall be accepted by Contractor as full compensation for all Services. Contractor acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County's obligation to compensate Contractor for all Services (including ordering, production, and distribution of Apparel and Promotional Items). These maximum amounts, however, do not constitute a limitation of any sort upon Contractor's obligation to perform all Services required under this Agreement. The maximum amounts described above are inclusive of any revenue sharing amounts, as more fully described in Exhibit B (for example, if there is \$5,000.00 allocated to County through the revenue sharing for an annual period and the applicable not-to-exceed amount for that annual period is \$400,000.00, the invoiceable amounts under this Agreement for that annual period are limited to \$395,000.00).

5.2. Method of Billing and Payment. Contractor may submit invoices as follows:

5.2.1. For orders placed directly through the E-Commerce Website, Contractor shall utilize a direct billing method under which payment is made by the party placing the order. The payment collected by Contractor via the E-Commerce Website for these orders is full and final payment owed to Contractor for any Apparel, Promotional Items, or other items purchased.

5.2.2. For orders placed via Direct Purchase Order, Contractor will invoice County after complete delivery of the Apparel and Promotional Items identified in the Direct Purchase Order. Invoices shall designate the Direct Purchase Order numbers, the date of the Direct Purchase Order(s), the Apparel and Promotional Items ordered and delivered for each Direct Purchase Order, and any other details as requested by the Contract Administrator.

5.2.3. On a monthly basis throughout the Term, Contractor shall submit to Contract Administrator a Certification of Payments to Subcontractors and Suppliers (Exhibit G). The certification shall be accompanied by a copy of the notification sent to each unpaid Subcontractor listed on the form, explaining the good cause why payment has not been made to that Subcontractor.

5.2.4. County shall pay Contractor within thirty (30) days after receipt of Contractor's proper invoice, as required under 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 then-current form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement. Payment shall be made to Contractor at the address designated in the Notices section.

5.2.5. Contractor shall pay Subcontractors and CBE suppliers within fifteen (15) days following receipt of payment from County for such subcontracted work or supplies. Contractor agrees that it will not withhold any amounts from Subcontractors as retainage as general retainage is not provided for in this Agreement between County and Contractor. Contractor shall pay all suppliers other than CBE suppliers in accordance with the terms of its separate agreements with such suppliers. Contractor's failure to pay a Subcontractor or suppliers in accordance with this subsection shall be a material breach of this Agreement, unless Contractor demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, Contractor promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Contractor shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.2.6. Contractor shall provide County with a monthly report of each County department's and agency's utilization of the Services, identifying with detail all Direct Purchase Orders and other purchases made from Contractor, all amounts paid, and any other information as may be requested by the Contract Administrator in her or his discretion.

5.3. Costs and Expenses for the E-Commerce Website. Except as provided in Exhibit B, Contractor shall be solely responsible for all costs and expenses relating to the creation, maintenance, or operation of the E-Commerce Website (including, without limitation, any credit card, PayPal, or other transaction-based fees incurred as a result of purchases via the E-Commerce Website).

5.4. Reimbursable Expenses. Except for art, design, and set-up charges expressly authorized in a Direct Purchase Order, Contractor is solely responsible for all costs or expenses incurred by Contractor associated with performing the Services or otherwise under this Agreement and County shall not be liable for any such expenses.

5.5. Subcontractors. Contractor is solely responsible for payment of all Subcontractor fees, costs, and expenses, and County shall have not be liable for any such expenses.

5.6. Withholding by County. 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 that has not been remedied or resolved in a

manner satisfactory to the Contract Administrator or failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representation of Authority. Contractor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Contractor has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Contractor. Contractor further represents and warrants that execution of this Agreement is within Contractor's legal powers, and each individual executing this Agreement on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

6.2. Solicitation Representations. Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Agreement, unless otherwise expressly disclosed in writing by Contractor.

6.3. Contingency Fee. Contractor represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4. Truth-In-Negotiation Representation. Contractor's compensation under this Agreement is based upon its representations to County, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

6.5. Public Entity Crime Act. Contractor 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. Contractor 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 Contractor has been placed on the convicted vendor list.

6.6. Discriminatory Vendor and Scrutinized Companies Lists. Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida

Statutes. Contractor further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

6.7. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required and optional Services under this Agreement, and 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. Contractor represents and warrants that the 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.

6.8. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Contractor certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

6.9. Breach of Representations. In entering into this Agreement, Contractor acknowledges that County is materially relying on the representations and warranties of Contractor stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Contractor, to deduct from the compensation due Contractor under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Contractor under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

ARTICLE 7. INDEMNIFICATION

Contractor shall indemnify, hold harmless, and defend County and all of County's current, past, and future 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, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Contractor 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 the 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 Contractor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 8. INSURANCE

8.1. For the duration of the Agreement, Contractor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.2. Contractor shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article.

8.3. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, Contractor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Contractor shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.4. Contractor shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Contractor has been completed, as determined by Contract Administrator. Contractor or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Contractor shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

8.5. Contractor shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

8.6. If Contractor maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, County shall be entitled to any such broader coverage and higher limits maintained by Contractor. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Contractor.

8.7. Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Contractor agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor agrees to obtain same in endorsements to the required policies.

8.8. Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor's insurers may acquire against County and agrees to obtain same in an endorsement of Contractor's insurance policies.

8.9. Contractor shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies.

8.10. In the event Contractor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. Contractor shall not permit any Subcontractor to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Contractor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

8.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Contractor must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

ARTICLE 9. TERMINATION

9.1. 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 be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

9.2. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.2.1. Contractor's failure to suitably perform the Services, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

9.2.2. If Contractor is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if Contractor is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes;

9.2.3. By the Contract Administrator or the Director of Office of Economic and Small Business Development ("OESBD") for any fraud, misrepresentation, or material misstatement by Contractor in the award or performance of this Agreement or that otherwise violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

9.2.4. By the Director of OESBD upon the disqualification of Contractor as a CBE if Contractor's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Contractor, or upon the disqualification of one or more of Contractor's CBE participants by County's Director of 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 Contractor during the procurement or the performance of this Agreement.

9.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. In the event this Agreement is terminated for convenience by County, Contractor shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Contractor acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Contractor, for County's right to terminate this Agreement for convenience.

9.5. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

10.1. 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. Contractor 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 nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2. Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Contractor to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

10.3. Contractor will meet the required CBE goal by utilizing the CBE firms listed in Exhibit E (or a CBE firm substituted for a listed firm, if permitted) for twenty-five percent (25%) of total Services under this Agreement (the "Commitment").

10.4. In performing the Services, Contractor shall utilize the CBE firms listed in Exhibit E for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by County, Contractor shall enter into formal contracts with the CBE firms listed in Exhibit E and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

10.5. Each CBE firm utilized by Contractor to meet the CBE goal must be certified by OESBD. Contractor shall inform County immediately when a CBE firm is not able to perform or if Contractor believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Contractor to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Contractor shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event, Contractor shall notify County, and OESBD may adjust the CBE goal by written notice to Contractor. Contractor shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

10.6. The Parties stipulate that if Contractor fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If

Contractor fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

10.7. Contractor acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify County in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

10.8. County may modify the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, change order, or Direct Purchase Order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Direct Purchase Orders, increases the initial Agreement price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Direct Purchase Order, and shall report such efforts, along with evidence thereof, to OESBD.

10.9. Contractor shall provide written monthly reports to the Contract Administrator attesting to Contractor's compliance with the CBE goal stated in this article. In addition, Contractor shall allow County to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining Contractor's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

10.10. The Contract Administrator may increase allowable retainage or withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Contractor's contract with a CBE

firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

ARTICLE 11. MISCELLANEOUS

11.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement. The Contract Administrator may approve in writing minor modifications to the Scope of Services provided that such modifications do not increase the total cost to County or waive any rights of County.

11.2. Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by Contractor (including, but not limited to, art design, mockups, and drawings relating to Apparel or Promotional Items) in connection with performing Services under this Agreement shall be owned by County and shall be deemed works for hire by Contractor and its agents; in the event the Services are determined not to be a work for hire, Contractor hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of County and shall be delivered by Contractor to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Contractor may be withheld until all documents are received as provided in this Agreement. Contractor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.3. Public Records. To the extent Contractor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Contractor shall:

11.3.1. Keep and maintain public records required by County to perform the services under this Agreement;

11.3.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

11.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

11.3.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Contractor or keep and maintain public records required by County to perform the services. If Contractor transfers the records to County, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains the public records, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Contractor will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Contractor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Contractor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Contractor as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Contractor. Contractor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-2450, SJONES@BROWARD.ORG, 110 N.W. THIRD AVENUE, SUITE 100, FORT LAUDERDALE, FLORIDA 33301.

11.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Contractor and its Subcontractors that are related to this Agreement. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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, Contractor or its Subcontractor shall make same available in written form at no cost to County.

Contractor and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Contractor hereby grants County the right to conduct such audit or review at Contractor'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 Contractor in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Contractor in addition to adjusting for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Contractor.

Contractor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.5. Independent Contractor. Contractor is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Contractor nor its agents shall act as officers, employees, or agents of County. Contractor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

11.6. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement and in the capacity as owner of the Project. In the event County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement and shall not be attributable in any manner to County as a party to this Agreement.

11.7. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

11.8. Third-Party Beneficiaries. Neither Contractor 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.

11.9. 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, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Greater Fort Lauderdale Convention and Visitors Bureau
Attn: Stacey Ritter
101 NE 3rd Avenue, Suite 100
Fort Lauderdale, Florida 33301
Email address: SRitter@Broward.org

FOR CONTRACTOR:

Sharp Marketing LLC
Attn: Nestor Villalobos, VP -Sales & Marketing
655 West Prospect Road
Fort Lauderdale, Florida 33309
Email address: nestor@sharpmarketing.com

11.10. Subcontracting and Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Notwithstanding any such subcontracting, Contractor remains solely responsible and liable to County for performance of all obligations described in this Agreement. Contractor states that as of the Effective Date, Shopify, Inc., a Canadian corporation, is performing Services as a Subcontractor. Except for subcontracting approved in writing by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. Any assignment by Contractor in violation of this section is void and of no effect. If Contractor violates this provision, in addition to any other rights and remedies that are available, County shall have the right to immediately terminate this Agreement.

11.11. Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor 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 that 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 Contractor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

11.12. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. 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. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.13. Compliance with Laws. Contractor and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations. Without limiting the scope of the preceding sentence, Contractor shall ensure that the E-Commerce Website is fully accessible and compliant with the American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations, and that the Services meet or exceed the World Wide Web Consortium/Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard or any higher standard as may be adopted by the International Organization for Standardization. Upon request, Contractor will provide the County with any accessibility testing results and written documentation verifying accessibility, as well as promptly respond to and resolve accessibility complaints.

11.14. 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.

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

11.16. Interpretation. The titles and 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. Any reference to “days” means calendar days, unless otherwise expressly stated.

11.17. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect.

11.18. 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 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 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, CONTRACTOR 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.**

11.19. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Contractor.

11.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter 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.

11.21. Payable Interest

11.21.1. Payment of Interest. County shall not be liable to pay any interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor 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 subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.21.2. Rate of Interest. If the preceding subsection is inapplicable or 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, one quarter of one percent (0.25%) simple interest (uncompounded).

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

11.23. 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.

11.24. Use of County Logo and Other Intellectual Property. All marks, logos, designs, and other intellectual property provided to Contractor by County or the GFLCVB, and any marks, logos, or designs created by Contractor for use on Apparel or Promotional Items (collectively, "County Logos and Marks") are the sole and exclusive intellectual property of County. Except in connection with the production, sale, and distribution of Apparel and Promotional Items during the term of this Agreement, Contractor shall not use any County Logos and Marks for any purpose, including without limitation in any marketing or publicity materials, without the prior written consent of County.

11.25. Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Contractor certifies that it has a drug-free workplace program that it will maintain such drug-free workplace program for the duration of this Agreement.

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

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ___ day of _____, 20___, and Contractor, signing by and through its Vice President of Sales 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: _____

_____ day of _____, 20__

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

By:  _____ 4/20/19
Nathaniel A. Klitsberg (Date)
Senior Assistant County Attorney

By:  _____ 4/20/19
René D. Harrod (Date)
Deputy County Attorney

NAK
2019-04-17 Promotional Items – Sharp Marketing Agreement.doc
4/17/2019
#42998v1

AGREEMENT BETWEEN BROWARD COUNTY AND SHARP MARKETING FOR DISTRIBUTION OF
PROMOTIONAL ITEMS (RFP # GEN2116293P1)

CONTRACTOR

WITNESSES:

Necia Irwin
Signature

Necia Irwin
Print Name of Witness above

Allen Lee
Signature

Allen Lee
Print Name of Witness above

SHARP MARKETING LLC

By: [Signature]
Authorized Signor

Nestor Villalobos VP Sales
Print Name and Title

22nd day of April, 2019

ATTEST:
[Signature]
Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

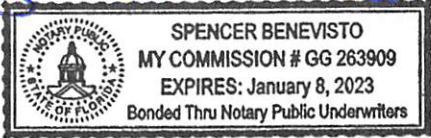
[Signature] 2/22/19


EXHIBIT A

Scope of Services

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

1.1. Contractor shall manufacture, purchase, distribute, and sell Apparel and Promotional Items to and on behalf of County, GFLCVB, and other County agencies, and further make such items available to County Employees and, upon written request by County, to the general public. These items include, but are not limited to, the list of items identified on Exhibit A-1. County may identify additional Apparel and Promotional Items that it desires Contractor make available, which items shall be deemed included in the scope of Apparel and Promotional Items under this Agreement upon such written request by County. Contractor shall store all inventory of Apparel and Promotional Items in a climate-controlled location of not less than 400 cubic feet, at Contractor's sole cost and expense. Any additional storage space requested by County in writing above the amount set forth in this section will be invoiced by Contractor at a pass-through rate to County on a monthly basis, and chargeable against the applicable maximum amounts stated in Section 5.1.

1.2. All logo and trademark colors and placements are subject to Contract Administrator's prior written approval.

1.3. If County requests Apparel or Promotional Items other than those identified in Exhibit A-1, or items available on County's current e-commerce website(s) prior to the Effective Date, and Contractor does not manufacture the requested items, Contractor shall obtain not less than three (3) bids from manufacturers of such items and provide same to Contract Administrator, along with Contractor's recommendations of which manufacturer to use. If Contractor's recommended manufacturer is not the lowest price per unit, Contractor shall provide written details to Contract Administrator justifying the recommendation. Contractor's use of any manufacturer other than the low-price manufacturer must be approved in advance by Contract Administrator in writing.

1.4. After a request from Contract Administrator for pricing for a potential Direct Purchase Order, Contractor will, within five (5) days after the request, provide a written quote via email to Contract Administrator. All quotes shall include price, product minimums, art set up charges, rush fees if applicable, product availability, product specifications, production time, expected delivery date, price guarantee, and expiration date (if applicable). Where applicable, freight options will be quoted.

1.5. The E-Commerce Website in existence as of the Effective Date will continue to be operated and maintained by Contractor (subject to County's continuing approval), at Contractor's sole cost and expense (other than any domain name registration or renewal fees, which will be invoiced by Contractor to County on a pass-through cost basis). Any additional e-commerce domains or platforms requested by County and ordered via a Direct Purchase Order

in accordance with the terms of the Agreement will be deemed included in the definition of E-Commerce Website. The design, type, nature, and pricing of the Apparel and Promotional Items made available on the E-Commerce Website are subject to prior written approval of the Contract Administrator.

1.6. Contractor will be allowed to exercise reasonable administrative controls to refuse orders or purchases on the E-Commerce Website from third parties that are not deemed credit worthy by Contractor.

1.7. Contractor shall maintain and staff a toll-free customer support telephone number during normal business hours of 9:00 a.m. until 5:00 p.m. (Eastern Time), Monday through Friday, to assist with product ordering, sales, and technical issues relating to the E-Commerce Website. In addition, Contractor shall be available and respond to e-mail to Contract Administrator outside normal business hours.

1.8. Contractor shall provide County quarterly sales reports identifying all Apparel and Promotional Items sold, identifying the quantity, pricing, date of each sale, and such other information as may be requested by Contract Administrator. If any such items are sold to individuals or entities other than to County or any of its agencies, Contractor shall separately identify such sales and identify the gross profit generated from such sales to allow County to monitor the applicable revenue share as more fully described in Exhibit B. These quarterly sales reports shall further identify the revenue sharing amount for that quarter and identify the Direct Purchase Orders against which the shared revenue is applied.

**EXHIBIT A-1
INITIAL APPAREL AND PROMOTIONAL ITEM LIST AND PRICING (BASED ON UNIT VOLUME)**

Broward County Board of
County Commissioners

GEN2116293P1

Sharp Marketing						
Bid Contact		greg_ernwein nestor@sharpmarketing.com Ph 954-565-2711 Fax 954-565-2775	Address 855 West Prospect Fort Lauderdale, FL 33309			
Supplier Code		VC0000033227				
Qualifications		CBE MBE SB SBE				
Bid Notes		This submission INCLUDES all the additional documents that were requested. All prices INCLUDE shipping costs to destination.				
Item #	Line Item	Notes	Unit Price	Qty/Unit	Attach.	Doc
GEN2116293P1--01-01	Recession Buster Tote Bag	Supplier Product Code: Y2K13513 Supplier Notes: Decoration: 1 Color/1 Side Imprint Size: 13" x 13" Specifications: 90 GSM non-woven polypropylene. 18.2" reinforced sewn handles Hemmed opening Stitched seams in the sides and bottom gusset.	First Offer - \$0.79	30000 / each	\$23,700.00	Y
GEN2116293P1--01-02	Non Woven Shopper	Supplier Product Code: YK13513DON Supplier Notes: Decoration: 1 Color/1 Side Imprint Size: 13.1 x 13.1 Specifications: 5.2" Gussets 82 GSM non-Woven Polypropylene Contains 20% post-industrial recycled content. Includes plastic insert	First Offer - \$0.91	5000 / each	\$4,550.00	Y
GEN2116293P1--01-03	Sunny.org Tote Bag	Supplier Product Code: NEWTOTE Supplier Notes: Decoration: Full Custom Size: 15" x 12" x 5.1" Specifications: Handles: 9 Inches 100% Cotton Tote, Faux Leather Teal Handles Faux Leather 3 Inch Teal Patch Fully Lined with Inner Zippered Pocket	First Offer - \$9.58	1500 / each	\$14,370.00	Y

9/12/2018

BidSync

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Broward County Board of
County Commissioners

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Snap Closure

GEN2116293P1--01-04	32x62 Velour Solid Beach Towel 16lbs/dz (48,000 Stitches)	Supplier Product Code: 104640-LT Pink Supplier Notes: Decoration: 48,000 Stitch count logo included. Size: 32"x62" Note - This pink version of this towel is Discontinued. Other color options are Celedon, Coral, Royal and Turquoise. Specifications: Velour 16lbs/dz	First Offer - \$18.39	50 / each	\$919.50	Y
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GEN2116293P1--01-05	40" x 70" Velour Solid Color Beach Towel	Supplier Product Code: 104150 Supplier Notes: Decoration: 25,000 stitch count logo included. Size: 40" x 70" Velour Solid Beach Towel Specifications: 100% Ring Spun Cotton 1.8lb Each Towel Fade Resistant Dobby Border Finish	First Offer - \$12.43	50 / each	\$621.50	Y
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GEN2116293P1--01-06	Velour Blue and White Striped Beach Towel	Supplier Product Code: 104575-Blue Supplier Notes: Decoration: 10,000 stitch count logo included. Size: 32"x62" Specifications:	First Offer - \$8.15	2500 / each	\$20,375.00	Y
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Broward County Board of
County Commissioners

GEN2116293P1

Velour Blue and White Striped Beach Towel. Price
includes embroidery.

GEN2116293P1--01-07	Six -panel twill cap	Supplier Product Code: CP80 Supplier Notes: Decoration: 10,000 stitch count logo included. Size: One Size Fits All Specifications: 100% cotton twill; 80/20 poly/cotton (Neons) Structure: Structured Profile: Mid Closure: Hook and loop	First Offer - \$4.75	50 / each	\$237.50	Y
GEN2116293P1--01-08	Sleek Aluminum 4,000 mAh Power Bank	Supplier Product Code: SM-3923 Supplier Notes: Decoration: 1 Color/1 Location Included Size: 4.75" x 0.375" Specifications: Input: 5V/1000mA. Output 1:5V/2000mA; Output 2:5V/1000mA.	First Offer - \$7.93	1000 / each	\$7,930.00	Y
GEN2116293P1--01-09	District Made Ladies Perfect Tri Crew Tee.	Supplier Product Code: DM130L Supplier Notes: Decoration: Blank Note: Description says "Blank product only". For the 7 color imprint as shown in the image, the price is \$13.11/unit (\$1,966.50 Total for 150pcs) Specifications: 4.5-ounce, 50/25/25 poly/ring spun combed cotton/rayon, 32 singles Tear-away tag Tri-Blend fabric infuses each garment with unique character.	First Offer - \$3.88	150 / each	\$582.00	Y

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Broward County Board of
County Commissioners

GEN2116293P1



GEN2116293P1--01-10	District Made Mens Perfect Tri Crew Tee	Supplier Product Code: DM130 Supplier Notes: Decoration: Blank Note: Description says "Blank product only". For the 7 color imprint as shown in the image, the price is \$13.11/unit (\$1,966.50 Total for 150pcs) Specifications: 4.5-ounce, 50/25/25 poly/ring spun combed cotton/rayon, 32 singles Tear-away tag Tri-Blend fabric infuses each garment with unique character.	First Offer - \$3.88	150 / each	\$582.00	Y
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GEN2116293P1--01-11	PVC Dimensional Luggage Tags	Supplier Product Code: PVC1 Supplier Notes: Decoration: Full Custom Size: 105x65mm Specifications: Silicone	First Offer - \$1.14	10000 / each	\$11,400.00	Y
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GEN2116293P1--01-12	Silicone Phone Wallet	Supplier Product Code: PHONE_WALLET Supplier Notes: Decoration: 2 Color Imprint Included Size:86*57mm Thickness:2mm Specifications: Silicone 3M adhesive on the backside 82*54mm paper card	First Offer - \$0.45	10000 / each	\$4,500.00	Y
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GEN2116293P1--01-13	Carry-On Bag	Supplier Product Code: GP06027 Supplier Notes: Decoration: Full Color Imprint Size: 9.5"x14.5"x22" Specifications: This luggage made of hard shell material (100%	First Offer - \$85.68	100 / each	\$8,568.00	Y
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GEN2116293P1

Polycarbonate/ABS Polycarbonate with Diamond Cut Texture) for maximum strength and resistance. Full color insert capability. Clam shell constructed with fully-lined imprinted interior. Tie-down straps and zippered pocket. 360-degree 8-wheel spinners allow effortless maneuverability. 2-inch expansion gusset provides extra storage capacity. Retractable top and side grab handles with gel cushion. Multi-stage push button handle system. 2" D gusset. Custom Print Insert.

GEN2116293P1--01-14	16" Beach Ball	Supplier Product Code: 750 Supplier Notes: Decoration: 1 Color 1 Location Size: 16" in diameter Specifications: Two tone alternating panels	First Offer - \$0.79	500 /each	\$395.00	Y
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GEN2116293P1--01-15	Rainbow Malibu Sunglasses	Supplier Product Code: 6219 Supplier Notes: Decoration: 1 Color/1 Location Size: One Size Fits All Specifications: Made of polycarbonate material and feature UV400 lenses that provide 100% UVA and UVB protection.	First Offer - \$1.39	10000 /each	\$13,900.00	Y
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GEN2116293P1--01-16	Amazon Echo Dot	Supplier Product Code: ECHO-DOT Supplier Notes: Decoration: Sticker Size: 1.3" x 3.3" x 3.3", 5.7 oz Specifications: Black	First Offer - \$40.76	500 /each	\$20,380.00	Y
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GEN2116293P1--01-17	BRIGHTtravels Packable Backpack	Supplier Product Code: 7007-08 Supplier Notes: Decoration: 2-color logo imprint Size: 11.5"x15.5"x5" Specifications:	First Offer - \$6.44	1000 /each	\$6,440.00	Y
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Folds into its own zippered pocket, to the size of an iPad Mini, for easy storage. Great item to pack for extras/souvenirs from a trip.
Features include adjustable, padded straps, mesh water-bottle pocket, approx. 13L main zippered compartment and two front pockets.

GEN2116293P1--01-18	Port Authority cinch pack with mesh trim	<p>Supplier Product Code: BG810</p> <p>Supplier Notes: Decoration: 10,000 stitch count logo included. Size: 14.5"x18" Specifications: Cinch Pack with Mesh Trim. Just right for the beach or by the pool, this large cinch pack will easily hold shoes or a change of clothes. 100% polyester microfiber on the front, 100% polyester air mesh above pocket and on the back. Breathable air mesh above pocket and on back Front zippered pocket Black drawcord Reinforced bottom grommets Dimensions: 18"h x 14.5"w Includes 1 Location Embroidery</p>	First Offer - \$4.94	1500 / each	\$7,410.00	Y
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GEN2116293P1--01-19	Journal with Pen - Peace Love & Sandy Toes	<p>Supplier Product Code: NP-700CV0</p> <p>Supplier Notes: Decoration:1 Color/1 Location Size: 5"x7" Specifications: Price includes pen. Natural (clear) poly front cover reveals a full-color, custom insert printed on 80# gloss cover. Black chipboard back cover. 100 sheets of 60# ruled, graph, or blank filler. Stock important contacts and 3-year calendar page as last sheet of filler. Standard wire (black, white, bronze, or silver).</p>	First Offer - \$5.68	100 / each	\$568.00	Y
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GEN2116293P1--01-20	Custom Printed Lens Pinhole Sunglasses (UV400)	Supplier Product Code: RD100 Supplier Notes: Decoration: 1 Color/1 Side Size: 5 3/4"x1 7/8"x6" Specifications: High quality PC frame, waterproof, FDA, CPSIA & Prop 65 compliant;	First Offer - \$0.97	20000 /each	\$19,400.00	Y
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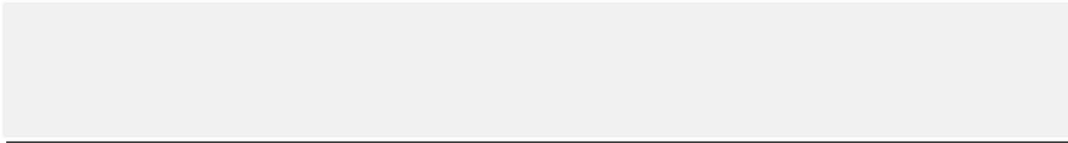
GEN2116293P1--01-21	Drink Coasters	Supplier Product Code: 1633 Supplier Notes: Decoration: 1 Color/1 Location Size: 4 3/8"x5/16" Specifications: Cork backing, natural cream color	First Offer - \$1.47	500 /each	\$735.00	Y
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GEN2116293P1--01-22	Boulder Waterproof Outdoor Bluetooth Speaker	Supplier Product Code: 7199-85 Supplier Notes: Decoration: 1 Color/1 Location Size: 7.6"x3.1"x1.5" Specifications: 6 Watt output and Digital Sound Processor is capable of filling any location with quality sound. Waterproof rating of IP66. Includes Micro USB Charging Cable. Bluetooth working range is 10 meters (33 feet).	First Offer - \$22.82	100 /each	\$2,282.00	Y
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GEN2116293P1--01-23	Satin Pen	Supplier Product Code: 895 Supplier Notes: Decoration: 1 Color/1 Location Size: 5 1/2" H Specifications: Rubberized grip for writing comfort and control.	First Offer - \$0.25	20000 /each	\$5,000.00	Y
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GEN2116293P1--01-24	Other Vendor	Supplier Product Code: N/A	First Offer - 35.00%	1 / each	35.00%	Y	Y
	Proposed	Supplier Notes:					
	Items - Fixed	https://www.zoomcats.com/catalog/hpcatalog#/1/					
	Percentage						
	Discount Off						
	Published List						
	Price						

						Supplier Total	\$174,845.50
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EXHIBIT B
Payment Schedule and Revenue Sharing

The rates specified/described 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.

Initial Apparel and Promotional Items Described in Exhibit A-1: Contractor shall charge County no more than the amounts specified in Exhibit A-1 for all Apparel and Promotional Items described in Exhibit A-1. For quantities in excess of those provided in Exhibit A-1, Contractor shall charge the lesser of (i) the per unit amounts specified in Exhibit A-1, or (ii) Contractor's actual costs plus fifteen percent (15%) gross profit margin. The term "gross profit margin" means Contractor's total revenue minus the cost of Apparel and Promotional Items sold, divided by the total revenue, multiplied by 100 (for example, where Contractor has a \$100.00 cost for an item of Apparel, a 15% gross profit margin would be \$17.65 and Contractor may charge County \$117.65 for the item -- \$117.65 total revenue minus \$100.00 product cost, divided by \$117.65 total revenue, multiplied by 100, equals 15).

Apparel and Promotional Items Not Described in Exhibit A-1: If County requests new Apparel or Promotional Items not identified in Exhibit A-1, Contractor shall, in advance of ordering:

1. Provide Contract Administrator a written proposal outlining any art, design, or set-up charges for such items; and
2. Provide Contract Administrator with the purchase price, specifying any volume discounts. The maximum product costs (as distinguished from art, design, and set-up charges) chargeable by Contractor for any such items shall be Contractor's actual costs plus seventeen and one-half percent (17.5%) gross profit margin.

Revenue Sharing:

All purchases made by individuals (rather than by the GFLCVB or other County departments and agencies, all of which are subject to the maximum amounts described in Article 5) ("Third-Party Sales") from the E-Commerce Website will be tracked by Contractor. One Hundred Percent (100%) of the net profit for such items generated from Third-Party Sales will be credited against County's Direct Purchase Orders. The term "net profit" mean the total amount received by Contractor above Contractor's costs for the transactions (inclusive of credit card processing fees, shipping charges not paid by the consumer, and refunds to consumers). Contractor shall provide County with a written monthly accounting of Third-Party Sales and shall identify the amounts credited against Direct Purchase Orders from the net profits on Third-Party Sales on each invoice.

EXHIBIT C Minimum Insurance Requirements

Project: RFP GEN2116293P1 Distribution of Promotional Items
Division: Purchasing Division


TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury Property Damage Combined Bodily Injury and Property Damage Personal Injury Products & Completed Operations	\$1,000,000	\$2,000,000
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined Bodily Injury and Property Damage	\$500,000	
<input type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$100,000	
<input type="checkbox"/> CRIME AND EMPLOYEE DISHONESTY	<input checked="" type="checkbox"/>				
<input type="checkbox"/> PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) All engineering, surveying and design professionals.	N/A	<input checked="" type="checkbox"/>	If claims-made form: Extended Reporting Period of: years *Maximum Deductible: \$100,000		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood): *Maximum Deductible:		Completed Value
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. Policies shall be endorsed to provide 30 days written notice of cancellation to Certificate Holder, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from Certificate Holder. *Vendor is responsible for <u>all</u> Deductibles. This QVL excludes any scope services subject to: Environmental Testing, Pollution Remediation, Hazardous Waste Removal.					
CERTIFICATE HOLDER: Broward County 115 South Andrews Avenue Fort Lauderdale, Florida 33301			 Risk Management Division		

EXHIBIT D
DIRECT PURCHASE ORDER FOR AGREEMENT BETWEEN BROWARD COUNTY AND SHARP
MARKETING FOR DISTRIBUTION OF PROMOTIONAL ITEMS (RFP # GEN2116293P1)

Contract Number: RFP # GEN2116293P1
Direct Purchase Order No. _____

This Direct Purchase Order is between Broward County and Sharp Marketing LLC (“Contractor”) pursuant to the Agreement, executed on _____. In the event of any inconsistency between this Direct Purchase Order and the Agreement, the provisions of the Agreement shall govern and control.

Apparel, Promotional Items, or other items being ordered:

SPECIFY ITEM DETAIL, QUANTITY, PRICING, AND DELIVERY DATE.

Total Cost of this Direct Purchase Order \$ _____

The foregoing amounts shall be invoiced by Contractor upon written acceptance by County of all goods and services provided under this Direct Purchase Order.

County

	_____ Contract Administrator	_____ Date
_____ Project Manager	_____ Board or Designee	_____ Date

Contractor

	_____ Signed	_____ Date
_____ Attest	_____ Typed Name	
	_____ Title	

EXHIBIT E
CBE Subcontractor Schedule and Letters of Intent

Contractor 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 or her knowledge.

EXHIBIT F
ETS Security Requirements
Service Level Agreement (“SLA”)

In connection with all Services provided to County under the Agreement, Contractor shall, at no additional cost to County, meet or exceed the requirements set forth in this Service Level Agreement (“SLA”) for the duration of the Agreement. The standards set forth herein are intended to reflect the current industry best practices for the E-Commerce Website (as defined in this Agreement) hosted or provided under this SLA. If and to the extent industry best practices evolve to impose higher standards than set forth herein, SLA shall be deemed to impose the new, higher standards upon Contractor. Contractor shall promptly notify County in writing of any material change to its compliance with these standards. Any approval by County under this SLA may be approved in writing by the Contract Administrator or the Director of County’s Division of Enterprise Technology Services (“ETS”).

1. Definitions

1.1. “Provider Platform” means any E-Commerce Website that constitutes part of the Services to the County, or otherwise stores, hosts, or transmits County Data. Contractor shall maintain the same standards set forth herein for all of its data centers and facilities that store or host County Data.

1.2. “County Data” means the data and information provided by County or its agents under this SLA and all results derived therefrom through the use of the Contractor’s services, whether or not electronically retained and regardless of the retention media.

1.3. Any other capitalized terms not defined herein refer to those defined terms in the Agreement.

2. Security

2.1. General

2.1.1. Contractor will ensure that County has the ability to authenticate all access by username/password or two-factor authentication. Contractor shall maintain, at a minimum, email address validation for any transactions through the E-Commerce Website (only permitting validated County employee email addresses to make transactions from the E-Commerce Website). Upon request, Contractor shall restrict access to the E-Commerce Website to a specific source static IP address.

2.1.2. Contractor shall ensure that separation of duties and least privilege are enforced for privileged or administrative access to County’s data and the Provider Platform.

2.1.3. Contractor’s procedures for the following must be documented and approved by

County within 10 days after the Effective Date of the Agreement:

- 2.1.3.1. Evaluating security alerts and vulnerabilities;
 - 2.1.3.2. Installing security patches and service packs;
 - 2.1.3.3. Intrusion detection, incident response, and incident escalation/investigation;
 - 2.1.3.4. Access and authorization procedures and resetting access controls (e.g., password policy);
 - 2.1.3.5. Risk analysis and assessment procedures;
 - 2.1.3.6. User access and termination procedures;
 - 2.1.3.7. Security log review;
 - 2.1.3.8. Physical facility access controls; and
 - 2.1.3.9. Change control procedures.
- 2.1.4. Contractor shall ensure that its service providers, subconsultants, and any third parties performing any Services relating to this SLA shall comply with all terms and conditions specified in this SLA unless County, in writing, excuses specific compliance with any such term or condition. Contractor shall provide County with a list of any such service providers, subconsultants or other third-parties on an annual basis, upon County's request, and promptly upon a material change in the composition of such entities.
- 2.1.5. If new or unanticipated threats or hazards to the Provider Platform are discovered by either County or Contractor, or if existing safeguards have ceased to function, the discovering party shall immediately bring the situation to the attention of the other party.
- 2.1.6. Contractor must mitigate critical or high-risk vulnerabilities to the Provider Platform as defined by Common Vulnerability and Exposures (CVE) scoring system within 30 days after patch release. If Contractor is unable to apply a patch to remedy the vulnerability, Contractor must notify County of proposed mitigation steps to be taken and timeline for resolution.

2.2. Controls

- 2.2.1. Prior to the Effective Date of the Agreement, and at least once annually and upon request for the duration of this SLA, Contractor shall provide County with a copy of a current unqualified System and Organization Controls (SOC) 2 Type II, Report for the Contractor, as well as any third party that provide hosting, or data storage services for the Provider Platform, inclusive of all five Trust Service Principles (Security, Availability, Processing Integrity, Confidentiality, and Privacy), unless the County's Chief Information Officer in his or her sole discretion approves other documentation of appropriate security controls implemented by Contractor. If the audit opinion in the SOC 2, Type II report is qualified in any way, Contractor shall provide sufficient documentation to demonstrate remediation of the issue(s) to the satisfaction of the County's Chief Information Officer.

2.2.2. Contractor shall maintain industry best practices for data privacy, security, and recovery measures including, but not limited to, disaster recovery programs, physical facilities security, server firewalls, virus scanning software, current security patches, user authentication, and intrusion detection and prevention. Unless otherwise provided in this SLA, upon request by County, Contractor shall provide documentation of such procedures and practices to County.

2.3. Network Architecture/Security

2.3.1. The Provider Platform shall be protected behind a layer of firewalls, the initial configuration diagram of which must be approved by County prior to Final Acceptance. Any subsequent changes to the configuration diagram are subject to approval by County, which shall not be unreasonably withheld. Contractor shall ensure that all database servers are protected behind a second set of internal firewalls.

2.3.2. Contractor shall submit a network architecture diagram of County's stored and transmitted data, including the location of data center and details of connectivity from all third parties who have access to County's data.

2.3.3. Contractor shall protect any Internet interfaces or web services provided under this SLA using a security certificate from a certification authority ("CA") that meets or exceeds the CA/Browser Forum's latest Secure Sockets Layer ("SSL") baseline requirements and network and certificate systems security requirements.

2.3.4. Contractor shall restrict inbound and outbound traffic to County network to "deny all, permit by exception" configuration.

2.3.5. Contractor will support encryption using at a minimum Advanced Encryption Standard 256-bit encryption keys ("AES-256") or current industry security standards (whichever is higher) for the connection to the Provider Platform.

2.3.6. Contractor's wireless networks connected to the Provider Platform shall be configured at a minimum using Wi-Fi Protected Access 2 (WPA2)-Enterprise, Advanced Encryption Standard (AES), and Protected Extensible Authentication Protocol (PEAP), current industry security standards (or whichever is higher) to secure and protect County data.

2.4. Physical Architecture/Security

2.4.1. Contractor shall ensure the facilities that house the network infrastructure for the Provider Platform are physically secure against threats such as unauthorized access and natural and environmental hazards, and entry controls are in place to limit and monitor physical access to the Provider Platform.

2.4.2. Contractor shall connect its hosting site for the Provider Platform through at least two (2) independent Internet Service Providers (“ISPs”) with different Internet points of presence.

2.4.3. Contractor shall ensure adequate background checks have been performed on any personnel having access to County data. To the extent permitted by such checks, Contractor shall not knowingly allow convicted felons or other persons deemed by Contractor to be a security risk to access County data. Contractor shall provide privacy and information security training to its employees upon hire and at least once annually.

2.5. Disaster Recovery

2.5.1. Contractor shall maintain a disaster recovery plan for the Provider Platform with mirrored sites geographically separated by at least 250 miles, with a Recovery Time Objective (“RTO”) of a maximum of eight (8) hours and a Recovery Point Objective (“RPO”) of a maximum of four (4) hours from the incident.

2.5.2. Contractor shall conduct a disaster recovery test of Contractor’s hosted system that comprises the Provider Platform under this SLA on at least an annual basis and shall notify County at least ten (10) days in advance of each such test. In addition, Contractor shall conduct a disaster recovery test specific to the County, including County’s data and utilization of the Provider Platform and County’s network and data, in coordination with County at least once per year; the timing and duration of the County-specific test is subject to the approval of County.

2.6. Incident Response

2.6.1. If any unauthorized party is successful in accessing any information technology component related to the Provider Platform, including but not limited to servers or fail-over servers where County’s data or files exist or are housed, Contractor shall report to County within twenty-four (24) hours of becoming aware of such breach. Contractor shall provide County with a detailed incident report within five (5) days after the breach, including remedial measures instituted and any law enforcement involvement. Contractor shall fully cooperate with County on incident response, forensics, and investigations that involve the Contractor’s infrastructure relating to any County data or County applications. Contractor shall not release County data or copies of County data without the advance written consent of County.

2.6.2. Contractor shall provide County with the names and contact information for a security point of contact and a backup security point of contact to assist County with security incidents prior to the Effective Date of this SLA.

2.7. County Data

2.7.1. Contractor shall maintain controls that ensure separation of County Data. Contractor agrees to provide at a minimum Advanced Encryption Standard 256-bit encryption keys ("AES-256") or current industry security standards (or whichever is higher) for social security numbers, taxpayer identification numbers, employer identification numbers, bank account numbers, passwords, cardholder data, and any other data such as Protected Health Information ("PHI") and Personally Identifiable Information ("PII") or as otherwise directed by County on all copies of such data stored, transmitted, or processed, at no additional charge to County, and shall classify such data internally at its highest confidentiality level. Contractor shall also ensure that the encryption key(s) are not stored with the encrypted data and are secured by a Hardware Security Module ("HSM"). Contractor shall immediately notify County of any compromise of the encryption keys. Contractor shall provide a copy of County's encryption key(s) at County's request. Contractor shall prohibit the use of unencrypted protocols such as FTP and Telnet for the data defined in this paragraph.

2.7.2. Any County Data must be available to County upon request within one (1) business day, in any format reasonably requested by County, including, without limitation, Extensible Markup Language ("XML") and Structured Query Language ("SQL"), or in another format as may be mutually agreed to by County and Contractor.

2.7.3. Upon termination or expiration of this SLA or end of serviceable life of any media used in connection with this SLA, and upon written notification from County that the applicable County Data is currently maintained by County or otherwise securely stored, Contractor shall, at County's option, (a) securely destroy all media (including media used for backups) containing any County Data on all decommissioned hard drives or storage media to National Institute of Standards and Technology ("NIST") standards and provide to County a signed certificate of destruction within ten (10) business days, or (b) return to County all County Data and provide a signed certification within two (2) business days documenting that no County Data is retained by Contractor in any format or media.

2.7.4. County Data is the property solely of County and may not be reproduced or used by Contractor with the prior written consent of County. Contractor and its subcontractors will not publish, transmit, release, sell, or disclose any County Data to any third party without County's prior written consent.

2.7.5. County shall have the right to use the Services to provide public access to County Data as County deems appropriate or as otherwise required by law.

2.7.6. In the event of any impermissible disclosure, loss or destruction of County Data relating to any action or omission of Contractor, Contractor must immediately notify County, take all reasonable and necessary steps to mitigate any potential harm, further disclosure, loss, or destruction.

3. Compliance

3.1. Contractor shall cooperate and provide any information requested by County relating to compliance and regulatory requirements. A request for information or review by County may include, but is not limited to, the following:

3.1.1. Vulnerability scans of authenticated and unauthenticated operating systems/networks, web applications, and database applications;

3.1.2. Automated scans and penetration (“Pen”) tests performed by County personnel or agents designated by County;

3.1.3. Review of requested documents, including without limitation, Contractor’s architecture documents, external audits of Contractor’s information security policies and procedures, Pen- test documentation, security incident reports, environment logs, virtual private network (“VPN”) access logs to terminal services, network traffic and firewall activity logs, Intrusion Detection System (“IDS”) attack alerts and anomalies, enterprise password management activity, server and application logs, and monthly or periodic network traffic and firewall activity logs; and

3.1.4. Physical inspection of Contractor’s facilities by County or its representatives.

3.2. Contractor shall provide County with the ability to generate account reports consisting of the account holder’s name and application access rights.

3.3. Contractor shall provide County with the ability to generate account management reports showing new users, access rights changes, and account termination with the associated time stamp information.

3.4. Contractor shall provide County with the ability to generate time-stamped user and administrator access (login/logout) and a list of activities performed by administrators, privileged users, or third-party contractors while using the System.

3.5. Upon request by County, Contractor shall promptly provide County with access to time-stamped data transfer logs (including the account, a description of the data transferred and its size, and the user and account names for forensic purposes), time-stamped application and platform environment change control logs, and time-stamped data backup logs indicating the backup type (e.g., full, incremental, etc.).

3.6. Upon County’s request, Contractor shall make available to the County proof of Contractor’s compliance with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this SLA, including but not limited to: HIPAA compliance; Contractor’s latest compliance reports (e.g., PCI Compliance report, SSAE 16 report, International Organization for Standardization 27001 (ISO 27001) certification); and

any other proof of compliance as may be required from time to time.

4. Service Availability

4.1. System Availability

4.1.1. Contractor guarantees that the Network Uptime (as defined herein) will be 99.99% of Prime Time (defined as County business days from 7 a.m. – 7 p.m. Eastern Time) and 98.00% of non-Prime Time for each calendar month during the term of the Agreement, excluding Scheduled Maintenance as defined herein (collectively, the “Network Uptime Guarantee”). Network Uptime is the time that the System and Services are functioning optimally and fully operational, and requires proper functioning of all network infrastructure, including routers, switches, and cabling, affecting a user’s ability to reliably transmit or receive data; Network Downtime is the remainder of time that is not included in Network Uptime, and is measured from the time the trouble ticket is opened to the time the network is fully restored. As long as the System is available over the Internet to at least two other comparable non-County customers (i.e., the System is functioning properly and there are no technical issues with Contractor or the Provider Platform), any inability on the part of County to access the System as a result of a general Internet outage will not be counted toward Network Downtime. System unavailability for the purpose of building redundancy or other recovery systems that is approved by County in advance shall not be charged as downtime in computing the Network Downtime. System unavailability due to Contractor’s equipment failure constitutes Network Downtime.

4.1.2. Contractor will refund to County five percent (5%) of the monthly fees (or monthly pro rata equivalent, if recurring fees under the Agreement are charged other than monthly) under the Agreement for each thirty (30) minutes of Network Downtime in excess of that permitted under the Network Uptime Guarantee (up to 100% of County’s monthly or pro rata fee), measured on a calendar month basis. Such refunds will be paid within ten (10) days after the applicable monthly report or, at County’s option, may be credited against amounts due under any unpaid invoice or future invoice.

4.1.3. Normal availability of the System shall be twenty-four (24) hours per day, seven (7) days per week. Planned downtime (i.e., taking the System offline such that it is not accessible to County) (“Scheduled Maintenance”) shall occur during non-Prime Time and with at least five (5) business days’ advance written notice to County. Contractor may conduct Scheduled Maintenance at other times without advance notice only with written consent from County, which consent will not be unreasonably withheld. During non-Prime Time, Contractor may perform routine maintenance operations that do not require the System to be taken offline but may have immaterial effects on System performance and response time without any notice to County. Such degradation in performance and response time shall not be deemed Network Downtime. All changes

that are expected to take more than four (4) hours to implement or are likely to impact user workflow require County's prior written approval, which will not be unreasonably withheld.

4.1.4. By the tenth day of each calendar month, Contractor shall provide to County a report detailing Contractor's performance under this SLA for the prior calendar month. To the extent the performance fails to meet the Network Uptime Guarantee, the report shall calculate: the total number of minutes of uptime for each of Prime Time and non-Prime Time; the total number of minutes for each of Prime Time and non-Prime Time minus any applicable Scheduled Maintenance, respectively; and the percentage of uptime versus total time minus Scheduled Maintenance for each (e.g., monthly minutes of non-Prime Time network uptime / (Total minutes of non-Prime Time – Minutes of Scheduled Maintenance) = %).

4.1.5. Contractor guarantees the functioning of all equipment components necessary for Contractor to provide the Services, the Provider Platform, and meet System availability requirements stated in this SLA.

4.2. Infrastructure Management

4.2.1. During Prime Time, Contractor shall ensure packet loss of less than one percent (1%) and less than sixty (60) milliseconds domestic latency within the Provider Platform. Contractor shall maintain sufficient bandwidth to the Provider Platform and ensure the server processing time (or CPU processing capacity) to provide millisecond response times from the server. County and Contractor recognize that end user response times are dependent on intermittent ISP network connectivity, and in the case of County's users, dependent on County's internal network health.

4.2.2. To the extent the Provider Platform provides or supports public access to users in Broward County or through the County's web pages, the E-Commerce Website shall support up to 500,000 site hits per calendar day and capture the number of site hits by page for performance to standards reporting.

4.2.3. Contractor shall ensure that an unlimited number of transactions may be processed to County production database. Subject to County approval, Contractor may recommend that non-routine reports and queries be limited to certain timeframes, quantities or other specifications if Contractor determines that such reports and queries cause degradation to response times affecting performance levels established in this SLA.

4.2.4. Contractor will retain all database records regardless of number or size.

4.2.5. Contractor shall routinely apply upgrades, new releases, and enhancements to the Provider Platform as they become available after prior, written approval by the

County and shall ensure that these changes will not adversely affect the Provider Platform.

4.2.6. To the extent the Provider Platform includes an ad-hoc reporting tool or standard reports, Contractor agrees to provide unlimited access to such functionality to County. Contractor agrees to support an unlimited number of queries and reports against County's Data. County agrees that Contractor may put reasonable size limits on queries and reports to maintain System performance, provided such limits do not materially impact County's regular business operations.

4.2.7. Contractor shall conduct full, encrypted System backups (including System and user data) weekly and shall conduct incremental, encrypted backups daily. Encrypted backups will be written to a backup device with sufficient capacity to handle the data. Contractor shall maintain a complete current set of encrypted backups for County's System, including County Data, at a remote, off-site "hardened" facility from which data can be retrieved within one (1) business day at any point in time. Full System restoration performed as a recovery procedure after a natural disaster is included as part of Contractor's required Services under this SLA. Upon County's request, Contractor shall also provide restoration of individual file(s).

4.2.8. A development and test system, which shall mirror the production system, shall be made available for use by County for testing or training purposes upon two (2) business days' request, including without limitation, upon request for County's testing of application upgrades and fixes prior to installation in the production environment. County may control data that is populated on the demonstration and training system by requesting that Contractor perform any or all of the following:

- 4.2.8.1. periodically refresh data from production;
- 4.2.8.2. perform an ad-hoc refresh of data from production;
- 4.2.8.3. not refresh data from production until further notice from County; or
- 4.2.8.4. refresh data on an ad hoc basis with training data supplied by County.

4.3. Performance Monitoring and Hosting Capacity Increases

4.3.1. If requested by County, Contractor shall provide standard reporting metrics of the Provider Platform to County on a monthly basis which shall include: traffic patterns by user and by time; server load, including central processing unit load, virtual memory, disk and input/output channel utilization; transmission control protocol load for each server allocated in part or in full to County System; and system errors in System, database, operating system, and each server allocated in part or in full to System.

4.3.2. In the event County anticipates an increase in transaction volume or seeks to expand capacity beyond the limitations, if any, provided under the Agreement, Contractor will provide timeline and cost estimates to upgrade existing servers or

deploy additional servers dedicated to County's System within fifteen (15) calendar days after written notice by County.

5. Transition/Disentanglement

5.1. Contractor will complete the transition of any terminated Services to County and any replacement providers that County designates (collectively, the "Transferee"), without causing any unnecessary interruption of, or adverse impact on, the Services ("Disentanglement"). Contractor will work in good faith (including, upon request, with the Transferee) at no additional cost to County to develop an orderly Disentanglement plan that documents the tasks required to accomplish an orderly transition with minimal business interruption or expense for County. Upon request by County, Contractor shall cooperate, take any necessary additional action, and perform such additional tasks that County may reasonably request to ensure timely and orderly Disentanglement, which shall be provided at the rate(s) specified in the Agreement or, if no applicable rate is specified, at a reasonable additional fee upon written approval by the County. Specifically, and without limiting the foregoing, Contractor shall:

5.1.1. Promptly provide the Transferee with all nonproprietary information needed to perform the Disentanglement, including, without limitation, data conversions, interface specifications, data about related professional services, and complete documentation of all relevant software and equipment configurations;

5.1.2. Promptly and orderly conclude all work in progress or provide documentation of work in progress to Transferee, as County may direct;

5.1.3. Not, without County's prior written consent, transfer, reassign or otherwise redeploy any of Contractor's personnel during the Disentanglement period from performing Contractor's obligations under this SLA;

5.1.4. If applicable, with reasonable prior written notice to County, remove its assets and equipment from County facilities;

5.1.5. If County requests, and to the extent permitted under the applicable agreements, assign to the Transferee (or use its best efforts to obtain consent to such assignment where required) all contracts including third-party licenses and maintenance and support agreements, used by Contractor exclusively in connection with the Services. Contractor shall perform all of its obligations under such contracts at all times prior to the date of assignment, and Contractor shall reimburse County for any losses resulting from any failure to perform any such obligations;

5.1.6. Deliver to Transferee all current, nonproprietary documentation and data related to County-owned assets and infrastructure. After confirming in writing with County that the applicable County data is received intact or otherwise securely stored by County,

Contractor shall securely erase all County Data, including on any hard drives and backup media, in accordance with NIST standards. Upon written consent from County, Contractor may retain one copy of documentation to the extent required for Contractor's archival purposes or warranty support; and

5.1.7. To the extent requested by County, provide to County a list with current valuation based on net book value of any Contractor-owned tangible assets used primarily by Contractor in connection with the Services. County shall have the right to acquire any or all such assets for net book value. If County elects to acquire such assets for the net book value, any and all related warranties will transfer along with those assets.

6. Payment Card Industry (PCI) Compliance

If and to the extent the Provider Platform accepts, transmits or stores any credit cardholder data County or is reasonably determined by County to potentially impact the security of County's cardholder data environment ("CDE"), the following provisions shall apply: Contractor shall comply with the most recent version of the Security Standards Council's Payment Card Industry ("PCI") Data Security Standard ("DSS"). Prior to the Effective Date, after any significant change to the CDE, and annually Contractor shall provide to County: (a) a copy of their Annual PCI DSS Attestation of Compliance ("AOC"); and (b) a written acknowledgement of responsibility for the security of cardholder data the service providers possess or otherwise store, process or transmit on behalf of the County, or to the extent that the service provider could impact the security of the county's cardholder data environment. A PCI DSS responsibility matrix that outlines the exact PCI DSS Controls are the responsibility of the service provider and which controls the service provider shares responsibility with the County. Contractor shall follow the VISA Cardholder Information Security Program ("CISP") payment Application Best Practices and Audit Procedures and maintain current validation. If Contractor subcontracts or in any way outsources the CDE processing, or provides an API which redirects or transmits County Data to a payment gateway, Contractor is responsible for maintaining PCI compliance for their API and providing the AOC for the subcontractor or payment gateway to the County. Mobile payment application providers must follow industry best practices such as VISA Cardholder Information Security Program ("CISP") or OWASP for secure coding and transmission of payment card data. Contractor agrees that it is responsible for the security of the County's cardholder data that it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data. Contractor will immediately notify County if it learns that it is no longer PCI DSS compliant and will immediately provide County the steps being taken to remediate the noncompliant status. In no event should Contractor's notification to County be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS complaint. Contractor shall enforce automatic disconnect of sessions for remote access technologies after a specific period of inactivity with regard to connectivity into County infrastructure. Contractor shall activate remote access from vendors and business partners into County network only when needed by vendors and partners, with immediate deactivation after use. Contractor shall implement encryption and two-factor authentication for securing remote access (non-console access) from outside the network into the County's environment with access to any stored credit card data.

Contractor shall maintain a file integrity monitoring program to ensure critical file system changes are monitored and approved with respect to County Data. All inbound and outbound connections to County's CDE must use Transport Layer Security (TLS) 1.2 or current industry equivalent (whichever is higher).

7. Managed Services/Professional Services (IT)/Third-Party Vendors

Contractor shall immediately notify County of any terminations or separations of Contractor's employees who performed Services to County under the Agreement or who had access to County data, and Contractor must ensure such employees' access to County data and network is promptly disabled. Contractor must ensure all Contractor's employees with access to County's network via an Active Directory account comply with all applicable County policies and procedures when accessing County's network. Contractor shall provide privacy and information security training to its employees with access the County's network upon hire and at least once annually. If any unauthorized party is successful in accessing any information technology component related to the Contractor, including but not limited to servers or fail-over servers where County data or files exist or are housed, Contractor shall report to County within twenty-four (24) hours of becoming aware of such breach. Contractor shall provide County with a detailed incident report within five (5) days after the breach, including remedial measures instituted and any law enforcement involvement. Contractor shall fully cooperate with County on incident response, forensics, and investigations into Contractor's infrastructure as it relates to any County data or County applications. Contractor shall not release County data or copies of County data without the advance written consent of County.

8. Software Installed in County Environment

8.1. Contractor shall advise County of any third-party software (e.g., Java, Adobe Reader/Flash, Silverlight) required to be installed and all versions supported. Contractor shall support updates for critical vulnerabilities discovered in applicable third-party software.

8.2. Contractor shall ensure that the Software is developed based on industry standards and best practices, including following secure programming techniques and incorporating security throughout the software-development life cycle.

8.3. Contractor shall ensure the Software provides for role-based access controls.

8.4. Contractor shall support electronic delivery of digitally signed upgrades from Contractor or supplier website.

8.5. Contractor shall enable auditing by default in software for any privileged access or changes.

8.6. Contractor shall regularly provide County with end-of-life-schedules for all applicable Software.

EXHIBIT G
Certification of Payments to Subcontractors and Suppliers

RLI/Bid/Contract No. RFP # GEN2116293P1
Project Title _____

The undersigned Contractor hereby swears under penalty of perjury that:

1. Contractor has paid all Subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with the "Compensation" article of this 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 Contractor.

Dated Apr. 22nd, 2019

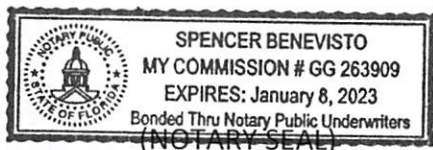
Sharp Marketing
Contractor

By _____
(Signature)

By Nestor Villalobos
(Name and Title)

STATE OF Florida)
)
COUNTY OF Broward)

Sworn to (or affirmed) and subscribed before this 22 day of APRIL, 2019,
by Nestor Villalobos who is personally known to me or who has produced
PL DL as identification.



[Signature]
Signature of Notary Public

SPENCER BENEVISTO
Print, Type or Stamp Name of Notary