

Solicitation OPN2127771F2

XIS Line of X-ray Inspection Systems

Bid Designation: Public



Broward County Board of County Commissioners

Bid OPN2127771F2

XIS Line of X-ray Inspection Systems

Bid Number **OPN2127771F2**
Bid Title **XIS Line of X-ray Inspection Systems**

Bid Start Date **In Held**
Bid End Date **Aug 27, 2024 2:00:00 PM EDT**
Question &
Answer End Date **Aug 16, 2024 5:00:00 PM EDT**

Bid Contact **Salustio Jaramillo**
Purchasing Agent
Purchasing Division
954-357-6066
sajaramillo@broward.org

Bid Contact **Tamar Haye**
Purchasing Agent
Purchasing Division
954-357-5681
Thaye@broward.org

Contract Duration **Not Applicable**
Contract Renewal **Not Applicable**
Prices Good for **Not Applicable**

Bid Comments **This Request for Information (RFI)/ Notice of Intent to Designate Sole Source/Sole Brand is intended to ascertain whether the commodity or service specified below is currently available from multiple providers/brands. This is not a request for pricing or a commitment to purchase.**

The following products are thought to be available from only a single source/brand. This RFI/Notice of Intent to Designate Sole Source/Sole Brand will remain posted until the due date and time indicated. Vendors should submit response electronically through Periscope S2G. Vendor should upload any supporting information in Periscope S2G to assist in determining if product or service is comparable.

Services: Warranty for Support and Maintenance of XIS Line of X-ray inspection systems.

The Broward County Aviation Department (BCAD) Security Division is requesting warranty for the support and maintenance of four (4) XIS -6040 160kV X-ray Inspection Systems Machines located in Terminals 1, 2, 3, 4 at the Fort Lauderdale-Hollywood International Airport (FLL). The X-Ray Machines are comprised of hardware and supporting components which require ongoing Support and Maintenance Services ("Services") in the forms of corrective and preventative maintenance.

If you are capable of meeting or exceeding the specification requirements for this product or equal, respond to this RFI/Notice of Intent to Designate Sole Source/Sole Brand through Periscope S2G. Provide product literature for any product to assist in determining if product is comparable. The Director of Purchasing shall have sole authority in deciding what is comparable.

Prospective Vendors are requested to provide information regarding their ability to supply the commodities or contractual services described or written explanation or other documentation contesting the proposed

designation as a Sole Source/Sole Brand. Prospective Vendors will be considered only if they provide documentation demonstrating that they are capable of meeting or exceeding the specification requirements stated herein. All Vendor responses will be evaluated by the Director of Purchasing who shall have sole authority in establishing the approved equal status of the commodity or service offered by the vendor.

The Director of Purchasing shall consider such submittals and notify all submitting vendors of the decision whether to designate as a Sole Source/Brand, which decision shall not be subject to objection, protest, or appeal.

Questions and Answers: The County provides a specified time for Vendors to ask questions and seek clarification regarding the requirements of the solicitation. All questions or clarification inquiries must be submitted through Periscope S2G by the date and time referenced in the solicitation document (including any addenda). The County will respond to all questions via Periscope.

Vendor MUST submit its solicitation response electronically and MUST confirm its submittal in order for the County to receive a valid response through Periscope. Refer to the Purchasing Division website or contact Periscope for submittal instructions. It is the Vendor's sole responsibility to ensure its response is submitted and received through Periscope by the date and time specified in the solicitation. The County will not consider solicitation responses received by other means. Vendors are encouraged to submit their responses in advance of the due date and time specified in the solicitation document. In the event that the Vendor is having difficulty submitting the solicitation document through Periscope, immediately notify the Purchasing Agent and then contact Periscope for technical assistance.

Item Response Form

Item **OPN2127771F2-01-01 - XIS line of X-Ray Inspection Systems**

Quantity **1 each**

Prices are not requested for this item.

Delivery Location **Broward County Board of County
Commissioners**

No Location Specified

Qty 1

Description

Warranty for Support and Maintenance of XIS line of X-ray Inspection Systems.

Question and Answers for Bid #OPN2127771F2 - XIS Line of X-ray Inspection Systems

Overall Bid Questions

There are no questions associated with this bid.



DATE: 11/27/23

TO: Robert Gleason, Director of Purchasing

THRU: Frank Capello

FROM: Tony Murico

PROJECT TITLE: Astrophysics - Employee Screening X-Ray Machines (Support and Maintenance/Optional Services)

REQUISITION NO.: AVA0002652

SOLE SOURCE/SOLE BRAND REQUEST

I. REQUEST: Provide a description of the features of the product/service or Scope of Work.

Contractor shall provide a minimum of a three (3) year warranty for the Support and Maintenance of four (4) Astrophysics XIS-6040 160kV X-Ray Inspection System Machines ("X-Ray Machines") located in Terminals 1, 2, 3, and 4 at the Fort Lauderdale-Hollywood International Airport (FLL).
Upon request by the County (and approval by the Contractor), the County may increase the warranty by up to an additional two (2) years for a maximum term of five (5) years.
The X-Ray Machines are comprised of hardware and supporting components which require ongoing Support and Maintenance Services ("Services") in the forms of corrective and preventative maintenance.
Upon request, the County may ask for various Optional Services related to the four (4) existing X-Ray Machines and supporting components and/or procurement of additional X-Ray Machines (or different model/s) during the term of the warranty.
Contractor shall provide the following Services to ensure and maintain optimal performance of the X-Ray Machines:
A. 24/7 Telephone & Email Support with a 2-Hour Response Time and the assignment of an on-site field service technician within Three (3) Business Day for an issue that may arise;
B. Labor, including, but not limited to, phone support, remote monitoring, technician servicing, travel;
C. Replacement Parts;
D. One annual Preventative Maintenance; and
E. One annual Radiation Survey.

II. JUSTIFICATION: Please check all boxes that describe your reason(s) for determining that only one source or brand is reasonably available.

Only Sole Source/Uniqueness

- Proprietary Item - this vendor/ source has the only rights to provide this service or commodity. A letter from the manufacturer or authorizing entity is included in this request.

Technology Improvements - updates or upgrades to an existing system, software, software as a service (SaaS), hardware purchases.

Engineering Direction - engineering drawing or specification identifies product; "no substitutes or equivalents will be acceptable."

Only qualified supplier - reliability and maintainability of the product or service would be degraded unless specified supplier is used; may void warranty. This request includes a copy of the current warranty information.

Other – the County requires this sole source, sole brand purchase for the following reasons:

Business Case (One/Most Reasonable Source or One/Most Reasonable Brand)

- Operational Compatibility - replacement parts from alternate suppliers are not interchangeable with original part and causes equipment incompatibility. Previous findings and/or documentation is included with this request.

Ease of Maintenance - maintenance or retooling prohibits competition. Section III, Comparative Market Research includes estimated costs associated with changing current source and/or brand.

Follow-On - potential for continued development or enhancement with same supplier and eliminates costs incurred by using different supplier. Section III, Comparative Market Research includes estimated costs for replacing current or existing system.

Complies with existing community and safety standards, and/or laws, rules, and regulations.

Exempted from the Procurement Code – per Section 21.5 of Broward County Administrative Code.

Other/or additional information – using this sole source, sole brand purchase benefits the County for the following reasons:

III. COMPARATIVE MARKET RESEARCH: Provide a detailed source or market analysis for justification of sole source/brand or most reasonable source (attach extra sheets as needed).

Estimated project value: Contract length (if applicable):

Expenses to date:

Has this commodity been previously provided to the County? ☒ Yes ☐ No

If yes, when and by whom?

How was item/service procured?

What is the current contract (MA) or purchase order number?

If this is a sole brand, is there an “authorized” dealers list? ☐ Yes ☒ No

Cost/Benefit Analysis: What would the cost be to utilize an alternate vendor or source? This explanation should include the savings and/or additional costs to the County by not using the preferred vendor or source. Attach additional sheets if needed.

These four (4) X-Ray Machines are inclusive of proprietary hardware/supporting components ("equipment") manufactured and supplied by Astrophysics.

Astrophysics is the sole sole provider for all of its equipment and support services associated with these X-Ray Machines.

All support services are required to be performed only by a trained and certified Astrophysics technician in the United States.

Due to all of these aforementioned factors, Astrophysics is the only feasible warranty contractor for these X-Ray Machines and the only alternative involves the procurement of brand-new units from another contractor to replace the entire line-up and start fresh (which could cost at least the original amount of \$109,900.00 and would most likely cause severe service disruptions and additional monies related to the removal of existing units and installation of new units).

CERTIFICATION: I have thoroughly researched the sole source or sole brand justification and fully understand the implications of Section 838.22 of the Florida Statutes:

- (2) "It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole source contract for commodities or services."
- (5) "Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084"

Anthony Murico

REQUESTOR/EVALUATOR
(PRINT)

Anthony Murico Digitally signed by Anthony Murico
Date: 2023.11.27 08:53:20 -05'00'

REQUESTOR/EVALUATOR (SIGN)

DATE

DEPT./DIV. DIRECTOR OR
DESIGNEE (PRINT)

Frank Capello Digitally signed by Frank Capello
Date: 2023.12.01 11:26:51 -05'00'

DEPT./DIV. DIRECTOR OR
DESIGNEE (SIGN)

DATE

The Purchasing Agent has reviewed the request and has completed the required due diligence per the Procurement Code Section(s) 21.25 and 21.26. The Purchasing Agent recommends the following:

☒ Sole Source ☐ Sole Brand ☐ Reasonable Source ☐ RFI attached ☐ Rejected

☐ Request Authorization to Negotiate

Additional Information:

The Purchasing Agent affirms that the required due diligence has been completed through Request for Information (RFI) No. OPN2127771F1 (Exhibit 1) and recommends approval of this request. RFI No. OPN2127771F1 was advertised on January 11, 2024 and opened on February 2, 2024 with no responses received. In a letter dated November 27, 2023 (Exhibit 2), Astrophysics Inc. stated that they are the exclusive developer and manufacturer, sole supplier and sole source warranty service provider of XIS Line of X-ray Inspection Systems. It is my recommendation that XIS Line of X-ray Inspection Systems be procured as a Sole Source. Per Numbered Memorandum Sequence No. 23-01, Delegation of Approval and Award Authority dated December 21, 2023, Sole Source may be approved by a Purchasing Manager if the award amount does not exceed the approved threshold (\$300,000).

Purchasing Agent Signature: SALUSTIO JARAMILLO Digitally signed by SALUSTIO JARAMILLO
Date: 2024.02.06 17:05:46 -05'00'

Date:

APPROVAL AUTHORITY

REASON/SUGGESTED ACTION (IF DISAPPROVED):

Signature: Jose Hidalgo Digitally signed by Jose Hidalgo
Date: 2024.02.08 17:05:30 -05'00'

Date:

**Bid Tabulation Packet
for
Solicitation OPN2127771F1**

XIS Line of X-ray Inspection Systems

Bid Designation: Public



Broward County Board of County Commissioners

Bid #OPN2127771F1 - XIS Line of X-ray Inspection Systems

Creation Date **Jan 9, 2024**

End Date **Feb 2, 2024 2:00:00 PM EST**

Start Date **Jan 11, 2024 5:03:22 PM EST**

Awarded Date **Not Yet Awarded**

OPN2127771F1-01-01 XIS line of X-Ray Inspection Systems							
Supplier		Unit Price		Qty/Unit	Total Price	Attch.	Docs
					No Bids		
Agency Product Code:				Supplier Notes:			
Agency Notes:							

**

**ASTROPHYSICS™**

21481 Ferrero Parkway
City of Industry, CA 91789
[P] 909.598.5488
[F] 909.598.5546

www.astrophysicsinc.com

November 27, 2023

To Whom It May Concern:

Astrophysics Inc. is the exclusive developer and manufacturer, sole source supplier and sole source warranty service provider of the XIS line of X-ray inspection systems in the United States, which includes the XIS 6040. Within the United States, the XIS line of inspection systems is sold only as a direct transaction between Astrophysics Inc. and the end-user. Astrophysics Inc. is the sole source supplier and sole source warranty service provider for the Fort Lauderdale-Hollywood International Airport in Broward County, Florida.

Due to proprietary components of the XIS, only service technicians who have successfully passed an Astrophysics maintenance certification exam and holding a current Astrophysics certification can install and provide warranty services for these systems using certified products, accessories and software. Damage resulting from service, testing, adjustment, installation, maintenance, alteration, or modification by someone other than an Astrophysics certified service technician or using non-Astrophysics branded or certified products, accessories, software, or peripheral equipment are excluded from coverage and may void the warranty in its entirety.

We invite you to email our Service Department at Service@AstrophysicsInc.com to verify the validity of any individual or entity claiming to be an Astrophysics certified service provider.

Best Regards,

François Tawk
Director of Service
Astrophysics Inc.

**Bid Tabulation Packet
for
Solicitation OPN2127771F2**

XIS Line of X-ray Inspection Systems

Bid Designation: Public



Broward County Board of County Commissioners

Bid #OPN2127771F2 - XIS Line of X-ray Inspection Systems

Creation Date **Aug 6, 2024**

End Date **Aug 27, 2024 2:00:00 PM EDT**

Start Date **Aug 7, 2024 9:41:07 AM EDT**

Awarded Date **Not Yet Awarded**

OPN2127771F2-01-01 XIS line of X-Ray Inspection Systems							
Supplier		Unit Price		Qty/Unit	Total Price	Attch.	Docs
					No Bids		
Agency Product Code:				Supplier Notes:			
Agency Notes:							

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Finance and Administrative Services Department

PURCHASING DIVISION

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

M E M O R A N D U M

DATE: August 28, 2024,

TO: Robert Gleason, Director,
Purchasing Division

THRU: Jose Hidalgo, Purchasing Manager, Purchasing Division **Jose Luis Hidalgo**
Digitally signed by Jose Luis Hidalgo
Date: 2024.08.29 11:05:40 -04'00'

FROM: Lucho Jaramillo, Purchasing Agent, Purchasing Division **SALUSTIO JARAMILLO**
Digitally signed by SALUSTIO JARAMILLO
Date: 2024.08.29 09:08:41 -04'00'

SUBJECT: Execution of Agreement with Astrophysics Inc for Astrophysics X-Ray Inspection Systems Machines

Enclosed is an Agreement between Broward County and Astrophysics Inc for the Broward County Aviation Department (BCAD), for your review and digital execution.

This Agreement provides support and maintenance for four (4) X-Ray Inspection System Machines at the Fort Lauderdale-Hollywood International Airport (FLL).

On January 11, 2024, a Request for Information (RFI) OPN2127771F1 was issued to determine if other vendors were able to provide the requested services. The RFI closed on February 2, 2024, with no responses.

On February 8, 2024, the Purchasing Manager approved Astrophysics Inc as a Sole Source to provide Astrophysics X-Ray Inspection Systems Machines in the estimated amount of \$215,000.

On August 7, 2024, a new Request for Information (RFI) OPN2127771F2 was issued to determine if other vendors were able to provide the requested services. The RFI closed on August 27, 2024, with no responses.

In accordance with Procurement Code, Section 21.47 (b)(1), the Director of Purchasing is authorized to execute all contracts and amendments within the Director's approval authority.

The Agreement was approved as to form by the County Attorney's Office

Please digitally execute the Agreement and return to Lucho Jaramillo for email distribution.

Exhibit 1 – Astrophysics Agreement



AGREEMENT BETWEEN BROWARD COUNTY AND ASTROPHYSICS INC FOR SUPPORT AND MAINTENANCE

This Technology Products Agreement ("Agreement") is between Broward County, a political subdivision of the State of Florida ("County"), and Astrophysics Inc, a Delaware corporation registered to transact business in the State of Florida ("Contractor") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. The Aviation Department (hereinafter defined) acquired four Astrophysics XIS-6040 160kV X-Ray Inspection System Machines ("X-Ray Machines") located in Terminals 1, 2, 3, and 4 of the Airport (hereinafter defined).

B. The X-Ray Machines are currently under warranty through August 19, 2024.

C. County, acting by and through its Director of Purchasing, determined that Contractor is the sole source to continue providing Support and Maintenance (hereinafter defined) for the X-Ray Machines.

D. The Parties desire to enter into this Agreement to, among other things, provide County with Support and Maintenance for the X-Ray Machines.

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. **Airport** means the Fort Lauderdale-Hollywood International Airport, located in Broward County, Florida, and all property encompassed within the boundaries of the Fort Lauderdale-Hollywood International Airport.

1.2. **Agreement Year** means the twelve (12) month period beginning on the Effective Date and ending twelve (12) months thereafter ("Agreement Year 1"), and each twelve (12) month period thereafter until the date this Agreement expires or terminates.

1.3. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.4. **Aviation Department** means the Broward County Aviation Department, or its successor agency.

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

- 1.6. **Business Hours** or **Business Day** means 7 a.m. to 7 p.m. Eastern Time during weekdays that are not County holidays or on which County has not otherwise declared its offices closed.
- 1.7. **Code** means the Broward County Code of Ordinances.
- 1.8. **Contract Administrator** means the Director of Aviation, or such other person designated by the Director of Aviation in writing.
- 1.9. **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.
- 1.10. **Director of Aviation** means the Director or Acting Director of the Aviation Department and such person or persons as may from time to time be authorized by the Board, or in writing by the County Administrator or the Director of Aviation, to act for the Director of Aviation with respect to any or all matters pertaining to this Agreement.
- 1.11. **Documentation** means all manuals, user documentation, specifications, and other related materials pertaining to what Contractor customarily furnishes to purchasers of the Services.
- 1.12. **Equipment** means the hardware and other property listed in **Exhibit A** being provided or supported by Contractor pursuant to this Agreement, including any embedded software and firmware incorporated therein or customarily provided to purchasers of such hardware or other property.
- 1.13. **Federal Aviation Administration** or **FAA** means the agency of the United States Government established under 49 U.S.C. § 106, or its successor.
- 1.14. **Support and Maintenance Fee** means the fee associated with use or support of the applicable Products, as outlined in **Exhibit B**.
- 1.15. **Notice to Proceed** means a written authorization to proceed with a project, phase, or task, issued by the Contract Administrator.
- 1.16. **Products** means all software, Equipment, and Services provided, supported, or required to be provided or supported by Contractor, as further specified in **Exhibit A**.
- 1.17. **Purchase Order** means a document that is approved and issued by County that sets forth the Optional Services required to be performed by Contractor for that particular order. Purchase Orders shall identify the applicable quantity, description, and price of the Optional Services ordered, and may contain additional terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and required performance by Contractor.
- 1.18. **Purchasing Director** means County's Director of Purchasing.

1.19. **Services** means all required installation, integration, programming, configuration, customization, operation, and enhancements of the Products, together with necessary and appropriate consulting, training, Support and Maintenance, project management services, and other services, to meet County's ongoing needs in connection with the Products, as further specified in **Exhibit A**, as well as any Optional Services procured under this Agreement.

1.20. **Subcontractor** means an entity or individual, including subconsultants, providing Services to County through Contractor, regardless of tier.

1.21. **Support and Maintenance** means the support and maintenance required for County to achieve and maintain optimal performance of Products or the System, including as further described in **Exhibit C**.

1.22. **System** means the complete system provided by Contractor pursuant to this Agreement as part of its Services hereunder, including all Products listed in **Exhibit A** and any other Products that Contractor will make available to County and third-party users as part of its Services.

ARTICLE 2. EXHIBITS

Exhibit A	Statement of Work
Exhibit B	Payment Schedule
Exhibit C	Support and Maintenance Minimum Standards
Exhibit D	Minimum Insurance Coverages
Exhibit E	Work Authorization Form
Exhibit F	Nondiscrimination Requirements
Exhibit G	Airport Security Requirements

ARTICLE 3. SCOPE OF SERVICES & TERMS OF USE

3.1. Scope of Services. Contractor shall perform all Services, including without limitation the work specified in **Exhibit A** (the "Statement of Work"). The Statement of Work 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.

3.2. Support and Maintenance. Contractor shall provide County with Support and Maintenance for the Products and the System as set forth in **Exhibit C**. Support and Maintenance shall be invoiced and paid in accordance with the Payment Schedule set forth in **Exhibit B**. County may elect to discontinue or recommence Support and Maintenance for some or all Products upon thirty (30) days prior written notice, and County shall only be obligated to pay for the time periods actually covered by Support and Maintenance at the rates stated in **Exhibit B**.

3.3. Compatibility. During the Term, Contractor will ensure the continued compatibility of the Products with all major releases, updates, or upgrades of any third-party software used by County

for access or operation of the System, including without limitation Active Directory (“AD”) and Geographic Information System Mapping (“GIS”). If Contractor is not able to support any third-party software update, upgrade, or new release that changes major functionality and is not compatible with the Products, Contractor shall use all reasonable efforts to resolve such issues and to provide optimal functionality of the Products consistent with this Agreement. If Contractor is unable to provide continued optimal functionality of the Products consistent with this Agreement due to any third-party software release, update, or upgrade, County shall be entitled to a refund of any Support and Maintenance Fee paid for the affected time period and affected Products and may, at County’s sole election, terminate the Agreement upon written notice with no further obligation to Contractor.

3.4. Documentation. Contractor shall deliver copies of the Documentation to County concurrently with delivery of the Products, and thereafter shall promptly provide any updated Documentation as it becomes available during the Term. Contractor represents and warrants that the Documentation is sufficiently comprehensive and of sufficient quality to enable a competent user to operate the Products efficiently and in accordance with **Exhibit A**. County has the right to copy, reproduce, modify, and create derivative works utilizing the Documentation as County deems necessary provided such activities are solely for the purpose of use of the Products as permitted under this Agreement.

3.5. Optional Services. If any Services, or the quantity thereof, are identified as optional (“Optional Services”), County may select the type, amount, and timing of Optional Services pursuant to a (i) work authorization in substantially the form attached as **Exhibit E** (“Work Authorization”) executed by Contractor and County pursuant to this section or (ii) Purchase Order, as County determines appropriate. Any Optional Services procured, when combined with the other required Services, shall not result in a payment obligation exceeding the applicable maximum amount stated in Section 5.1. Notwithstanding anything to the contrary in this Agreement, Work Authorizations shall be executed on behalf of County as follows: (a) the Contract Administrator may execute Work Authorizations for which the total aggregate cost to County is equal to or less than \$50,000.00; (b) the Purchasing Director may execute Work Authorizations for which the total aggregate cost to County is within the Purchasing Director’s delegated authority; and (c) any Work Authorization above the Purchasing Director’s delegated authority requires express approval by the Board. With respect to Purchase Orders, the Purchasing Director may approve Purchase Orders for which the total aggregate cost to County is within the Purchasing Director’s delegated authority. Contractor shall not commence work on any Work Authorization or Purchase Order until receipt of a Notice to Proceed issued by the Contract Administrator.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. The term of this Agreement shall commence on August 20, 2024 (“Effective Date”), and shall expire three (3) years thereafter (“Initial Term”), unless otherwise terminated or extended as provided in this Agreement. The Initial Term, Extension Term(s), and any Additional Extension, as those terms are defined in this article, are collectively referred to as the “Term.”

4.2. Extensions. County may extend this Agreement for up to two (2) additional one (1) year terms (each an “Extension Term”) on the same rates, terms, and conditions stated in this Agreement by sending written notice to Contractor at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise any Extension Term(s), and notice of same to Contractor by electronic mail alone shall be effective and sufficient.

4.3. Additional Extension. If the Purchasing Director determines, in their sole discretion, that unusual or exceptional circumstances render the exercise of an Extension Term not practicable, or that no Extension Term remains available and expiration of this Agreement would result in a gap in necessary Services, then the Purchasing Director may extend this Agreement for period(s) not to exceed three (3) months in the aggregate (“Additional Extension”) on the same rates, terms, and conditions as existed at the end of the then-current term. The Purchasing Director may exercise the Additional Extension by written notice to Contractor at least thirty (30) days prior to the end of the then-current term stating the duration of the Additional Extension. The Additional Extension must be within the authority of the Purchasing Director or otherwise authorized by the Board.

4.4. Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

4.5. Time of the Essence. Time is of the essence for Contractor’s performance of the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. COMPENSATION

5.1. Maximum Amounts. For all Products and Services provided under this Agreement, County will pay Contractor up to a maximum amount as follows:

Services/Products	Term	Not-To-Exceed Amount
Services and Support and Maintenance	Duration of Agreement	\$100,300.00
Optional Services	Duration of Agreement	\$399,700.00
TOTAL NOT TO EXCEED		\$500,000.00

Payment shall be made only for Services actually performed and completed pursuant to this Agreement as set forth in **Exhibit B**, which amount shall be accepted by Contractor as full compensation for all such 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 Products and Services. These maximum amounts, however, do not constitute a limitation of any sort upon Contractor’s obligation to perform all Services.

5.2. Method of Billing and Payment.

5.2.1. Unless otherwise stated in **Exhibit B**, Contractor must submit invoices no more often than once monthly, but only after the Services invoiced have been completed. Invoices are due within fifteen (15) days after the end of the month covered by the invoice, except that the final invoice must be received no later than sixty (60) days after the expiration or earlier termination of this Agreement. Unless otherwise stated in **Exhibit B** or the applicable Work Authorization or Purchase Order, any Optional Services shall be invoiced in accordance with the existing invoicing schedule for any like goods or services provided under this Agreement, including (if applicable) invoiced pro rata for the initial invoice period. Invoices shall describe the Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator. Contractor shall submit a Certification of Payments to Subcontractors and Suppliers (Form 00924, available at <https://www.broward.org/Purchasing/Pages/StandardTerms.aspx>) with each invoice that includes Services performed by a Subcontractor. 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.

5.2.2. Invoices shall be in the amounts set forth in **Exhibit B** for the applicable Services, minus any agreed upon retainage as stated in **Exhibit B**. Retainage amounts shall only be invoiced upon completion of all Services, unless otherwise stated in **Exhibit B**.

5.2.3. County shall pay Contractor within thirty (30) days after receipt of Contractor's proper invoice in accordance with the "Broward County Prompt Payment Ordinance," Section 1-51.6 of the Code. To be deemed proper, all invoices must: (a) comply with all applicable requirements, whether set forth in this Agreement or the Code; and (b) be submitted on the then-current County form and pursuant to instructions prescribed by the Contract Administrator. Payments shall be sent to Contractor's address in accordance with Article 12, unless otherwise requested by Contractor in writing and approved by the Contract Administrator in writing. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

5.2.4. Contractor must pay Subcontractors and suppliers within fifteen (15) days after receipt of payment from County for such subcontracted work or supplies. If Contractor withholds an amount as retainage from Subcontractors or suppliers, Contractor shall release such retainage and pay same within fifteen (15) days after receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this section shall be a material breach of this Agreement, unless Contractor demonstrates to Contract Administrator's satisfaction 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 section in its contracts with Subcontractors and suppliers.

5.3. Reimbursable Expenses. Contractor shall not be reimbursed for any expenses it incurs unless expressly provided for in this Agreement. Reimbursement of any travel costs or travel-related expenses permitted under this Agreement shall be limited to those permitted under Section 112.061, Florida Statutes, except to the extent that **Exhibit B** expressly provides otherwise. County shall not be liable for any expenses that exceed those allowed by Section 112.061 or that were not approved in writing in advance by the Contract Administrator.

5.4. Subcontractors. Contractor shall invoice Subcontractor fees only in the actual amount paid by Contractor, without markup or other adjustment.

5.5. Withholding by County; Overcharges. Notwithstanding any provision of this Agreement to the contrary, County may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Contractor's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County. In the event of an overcharge of any nature by Contractor in excess of five percent (5%) of the total amount billed in the invoice where the overcharge occurred, Contractor must refund the overbilled amount and pay liquidated damages in the amount of fifteen percent (15%) of the overbilled amount within thirty (30) days after demand by County as just compensation for damages incurred by County due to the overbilling, including, but not limited to, County's administrative costs and loss of potential investment returns (including interest).

5.6. Fixed Pricing. Unless otherwise stated in **Exhibit B**, prices shall remain firm and fixed for the duration of the Term. However, Contractor may offer incentive or volume discounts to County at any time.

ARTICLE 6. CONFIDENTIAL INFORMATION, PROPRIETARY RIGHTS, SECURITY REQUIREMENTS

6.1. Contractor Confidential Information. Contractor represents that the Products contain proprietary products and trade secrets of Contractor. Accordingly, to the full extent permissible under Applicable Law, County agrees to treat intellectual property within the Products as confidential in accordance with this article. For any other material submitted to County, Contractor must separately submit and conspicuously label as "RESTRICTED MATERIAL – DO NOT PRODUCE" any material (a) that Contractor contends, constitutes, or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Contractor asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, "Restricted Material"). In addition, Contractor must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Contractor must promptly identify the specific applicable statutory section that protects any particular document.

If a third party submits a request to County for records designated by Contractor as Restricted Material or for trade secret material in the Products, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Contractor, or the claimed exemption is waived. Any failure by Contractor to strictly comply with the requirements of this section shall constitute Contractor's waiver of County's obligation to treat the records as Restricted Material. Contractor must 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 nondisclosure of Restricted Material or materials relating to the Products in response to a third-party request.

6.2. County Confidential Information. All materials, data, transactions of all forms, financial information, documentation, inventions, designs, and methods that Contractor obtains from County in connection with this Agreement, that are made or developed by Contractor in the course of the performance of the Agreement, or in which County holds proprietary rights, constitute "County Confidential Information." All County-provided employee information, financial information, and personally identifiable information for individuals or entities interacting with County (including, without limitation, social security numbers, birth dates, banking and financial information, and other information deemed exempt or confidential under Applicable Law) also constitute "County Confidential Information."

6.2.1. County Confidential Information may not, without the prior written consent of County, or as otherwise required by Applicable Law, be used by Contractor or its employees, agents, Subcontractors, or suppliers for any purpose other than for the benefit of County pursuant to this Agreement. Neither Contractor nor its employees, agents, Subcontractors, or suppliers may sell, transfer, publish, disclose, display, license, or otherwise make available to any other person or entity any County Confidential Information without the prior written consent of County.

6.2.2. Contractor expressly agrees to be bound by and to defend, indemnify, and hold harmless County and its officers and employees from the breach of Applicable Law by Contractor or its employees, agents, Subcontractors, or suppliers regarding the unlawful use or disclosure of County Confidential Information.

6.2.3. Upon expiration or termination of this Agreement, or as otherwise demanded by County, Contractor shall immediately turn over to County all County Confidential Information, in any form, tangible or intangible, possessed by Contractor or its employees, agents, Subcontractors, or suppliers.

6.3. Maintenance of Confidential Information. Each Party shall advise its employees, agents, Subcontractors, and suppliers who receive or otherwise have access to the other Party's Confidential Information (as described in Section 6.1 or Section 6.2, as applicable) of their obligation to keep such information confidential and shall promptly advise the other Party in writing if it learns of any unauthorized use or disclosure of said Confidential Information. In

addition, the Parties agree to cooperate fully and provide all reasonable assistance to ensure the confidentiality of the other Party's Confidential Information as described in this article.

6.4. County Proprietary Rights. Contractor acknowledges and agrees that County retains all rights, title, and interest in and to all materials, data, documentation, and copies thereof furnished by County to Contractor under this Agreement, including all copyright and other proprietary rights therein, which Contractor as well as its employees, agents, Subcontractors, and suppliers may use only in connection with the performance of this Agreement.

6.5. Contractor Proprietary Rights. Except for custom work products, if any, County acknowledges that all copies of the software (in any form) are the sole property of Contractor or third-party licensor. County shall not have any right, title, or interest to any such software except as expressly provided in this Agreement and shall take reasonable steps to secure and protect the software consistent with maintenance of Contractor's proprietary rights therein.

6.6. Data and Privacy. Contractor shall comply with all applicable data and privacy laws and regulations, including without limitation Section 501.171, Florida Statutes, and shall ensure that County data processed, transmitted, or stored by Contractor or in the System is not accessed, transmitted, or stored outside the United States. Contractor shall not sell, market, publicize, distribute, or otherwise make available to any third party any personal identification information (as defined by Sections 501.171, 817.568, or 817.5685, Florida Statutes, as amended) that Contractor may receive or otherwise have access to in connection with this Agreement, unless expressly authorized in advance by County. If applicable and requested by County, Contractor shall ensure that all hard drives or other storage devices and media that contained County data have been wiped in accordance with the then-current best industry practices, including without limitation DOD 5220.22-M, and that an appropriate data wipe certification is provided to the satisfaction of the Contract Administrator.

6.7. Entities of Foreign Concern. By execution of this Agreement, the undersigned authorized representative of Contractor hereby attests under penalty of perjury as follows: Contractor is not owned by the government of a foreign country of concern, is not organized under the laws of nor has its principal place of business in a foreign country of concern, and the government of a foreign country of concern does not have a controlling interest in Contractor; and the undersigned authorized representative of Contractor declares that they have read the foregoing statement and that the facts stated in it are true. Terms used in this section that are not otherwise defined in this Agreement shall have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

6.8. Security Requirements. Contractor will cooperate with County and provide any and all information that County may reasonably request to determine appropriate security and network access restrictions and verify Contractor's compliance with County security requirements, including as stated herein.

6.9. Injunctive Relief; Survival. The Parties represent and agree that neither damages nor any other legal remedy is adequate to remedy any breach of this article, and that the injured party

shall therefore be entitled to injunctive relief to restrain or remedy any breach or threatened breach. The obligations under this article shall survive the termination of this Agreement or of any license granted under this Agreement.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1. Ownership. Contractor represents and warrants that it is the owner of all right, title, and interest in and to the software, or that it has the right to grant to County the rights and the licenses granted under this Agreement, and that Contractor has not knowingly granted rights or licenses to any other person or entity that would restrict rights and licenses granted hereunder, except as may be expressly stated herein.

7.2. Limited Warranty. For the Term, Contractor represents and warrants to County that the Products and System will perform substantially as described in the Documentation and in **Exhibit A**. This warranty does not cover any failure of the Products resulting from: (a) use of the Products in a manner other than that for which they were intended; (b) any modification of the Products by County that is not authorized by Contractor; or (c) County's provision of improperly formatted data to be processed through the System.

7.3. Warranty Regarding Viruses. Contractor further represents, warrants, and agrees that the Products are free from currently-known viruses or malicious software (at the time the Products and any subsequent versions thereof are provided to County), and that Contractor has and will continue, for the Term, to use commercially reasonable security measures to ensure the integrity of the Products from data leaks, hackers, denial of service attacks, and other unauthorized intrusions.

7.4. ADA Compliance. To the extent applicable, Contractor represents and warrants that the Products and System are, and for the duration of the Agreement will remain, fully accessible and compliant with the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and all other Applicable Law, and that the Products and System 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 County with any accessibility testing results and written documentation verifying accessibility, as well as promptly respond to and resolve accessibility complaints.

7.5. Intellectual Property Warranty. Contractor represents and warrants that at the time of entering into this Agreement, no claims have been asserted against Contractor (whether or not any action or proceeding has been brought) that allege that any part of the Products or System infringes or misappropriates any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party, and that Contractor is unaware of any such potential claim. Contractor also agrees, represents, and warrants that the Products, System, Services, and Support and Maintenance to be provided pursuant to this Agreement will not infringe or misappropriate any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party.

7.6. 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 Applicable Law. 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.

7.7. 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.

7.8. Contingency Fee. Contractor represents and warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and 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.

7.9. Truth-In-Negotiation Representation. Contractor's compensation under this Agreement is based upon its representations to County, and Contractor certifies that the factual Support and Maintenance costs, and other information supplied to substantiate Contractor's compensation, including without limitation those made by Contractor during the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for Contractor's compensation in this Agreement.

7.10. 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 statute. 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.

7.11. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Contractor represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Contractor represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the

grounds stated in Section 287.135, Florida Statutes. Contractor represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

7.12. Claims Against Contractor. Contractor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

7.13. Verification of Employment Eligibility. Contractor represents that Contractor and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Contractor violates this section, County may immediately terminate this Agreement for cause and Contractor shall be liable for all costs incurred by County due to the termination.

7.14. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that each person and entity that will provide Services 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 shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such Services.

7.15. Prohibited Telecommunications. Contractor represents and certifies that Contractor and all Subcontractors do not use, and for the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

7.16. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Contractor represents and certifies that Contractor will comply with Section 26-125(d) of the Code for the duration of the Term.

7.17. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the "Broward County Domestic Partnership Act," Section 16½-157 of the Code ("Act"), Contractor certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

7.18. Breach of Representations. Contractor acknowledges that County is materially relying on the representations, warranties, and certifications of Contractor stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Contractor; (c) set off from any amounts due Contractor the full amount of any damage incurred; and (d) debarment of Contractor.

ARTICLE 8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1. Indemnification. Contractor shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, 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 breach of this Agreement by Contractor, or any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party with 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. If 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.

8.2. Infringement Remedy. If the Products or any portion thereof are finally adjudged to infringe, or in Contractor's opinion are likely to become the subject of such a Claim, Contractor shall, at County's option, either: (i) procure for County the right to continue using the Products; (ii) modify or replace the Products to make them noninfringing; or (iii) refund to County all fees paid under this Agreement. Contractor shall have no liability regarding any infringement claim caused by any County modification of the Products not specifically authorized in writing by Contractor.

8.3. Limitation of Liability. Neither Contractor nor County shall be liable to the other Party for any damages under this Agreement that exceed the largest of the following amounts: (a) \$100,000 or (b) the compensation amount received by Contractor from County under this Agreement. Neither Party shall be liable for the other Party's special, indirect, punitive, or consequential damages (including damages resulting from lost data or records other than costs incurred in the recovery thereof), even if the Party has been advised that such damages are possible, or for the other Party's lost profits, lost revenue, or lost institutional operating savings. These limitations of liability shall not apply to (i) any Claim resulting from Contractor's actual or alleged disclosure of County Confidential Information or resulting from an actual or alleged data breach in violation of Applicable Law, (ii) any Claim resulting from an actual or alleged

infringement of any interest in any Product, (iii) any indemnification obligation under this Agreement, or (iv) any Claim covered by Contractor's minimum insurance requirements as set forth in **Exhibit D**.

ARTICLE 9. INSURANCE

9.1. Throughout the Term, Contractor shall, at its sole expense, maintain the minimum insurance coverages stated in **Exhibit D** 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.

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

9.3. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, as may be requested by County, 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.

9.4. Contractor shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required of 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).

9.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

9.6. If Contractor maintains broader coverage or higher limits than the insurance requirements stated in **Exhibit D**, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Contractor.

9.7. Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in **Exhibit D** 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. Any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor shall obtain same in endorsements to the required policies.

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

9.9. 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. Contractor shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

9.10. If 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. If requested by County, Contractor shall provide, within one (1) Business Day, evidence of each Subcontractor's compliance with this article.

9.11. 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 D**; 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 D**.

ARTICLE 10. TERMINATION

10.1. Termination for Cause. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) Business Days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

10.1.1. Contractor's (a) failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, Work Authorization, or Purchase Order, (b) suspension or debarment by a state or federal governmental entity or by a local governmental entity with a population in excess of one

million people, or (c) repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

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

10.1.3. 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, or upon the disqualification of one or more of Contractor's CBE participants by the Director of OESBD if any such participant's status as a CBE firm was a factor in the award of this Agreement.

Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in any other instance, termination for cause may be by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 10.2 effective thirty (30) days after such notice was provided and Contractor shall be eligible for the compensation provided in Section 10.2 as its sole remedy.

10.2. Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by the Board with at least thirty (30) days advance written notice to Contractor. Contractor acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance written notice to Contractor of such termination in accordance with this section. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If this Agreement is terminated by County pursuant to this section, Contractor shall be paid for any Services properly performed 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, and County shall have no further obligation to pay Contractor for Services under this Agreement.

10.3. 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.

10.4. In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by County due to Contractor's failure to comply with any term(s) of this Agreement.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

11.1. Contractor and Subcontractors shall not 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 all Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

11.2. By January 1 of each year, Contractor must submit, and cause each Subcontractor to submit, an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

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

11.4. 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 claims of nonpayment.

11.5. Force Majeure. If the performance of this Agreement, or any obligation hereunder, is prevented by reason of hurricane, earthquake, or other casualty caused by nature, epidemic, pandemic, or other public health emergency, or by labor strike, war, or by a law, order, proclamation, regulation, or ordinance of any governmental agency (collectively, “Force Majeure Event”), the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the affected Party shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such inability to perform due to the Force Majeure Event exceeds sixty (60) consecutive days, the Party that was not prevented from performance by the Force Majeure Event has the right to terminate this Agreement upon written notice to the other Party. This section shall not supersede or prevent the exercise of any right either Party may otherwise have to terminate this Agreement.

ARTICLE 12. MISCELLANEOUS

12.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Agreement. Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Statement of Work except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County

Procurement Code. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing minor modifications to the Statement of Work that do not increase the total cost to County or waive any rights of County.

12.2. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, or other work created by Contractor in connection with performing Services, whether finished or unfinished ("Documents and Work"), shall be owned by County, and Contractor hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and shall be delivered by Contractor to the Contract Administrator within seven (7) Business Days after expiration or termination. Any compensation due to Contractor may be withheld until all Documents and Work are received as provided in this Agreement. Contractor shall ensure the requirements of this section are included in all Contractor's agreements with Subcontractor(s).

12.3. Public Records. Notwithstanding any other provision in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Contractor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Contractor shall:

12.3.1. Keep and maintain public records required by County to perform the Services;

12.3.2. 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 Applicable Law;

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

12.3.4. Upon expiration 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 requirements of Applicable Law 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.

If Contractor receives a request for public records regarding this Agreement or the Services, Contractor must immediately notify the Contract Administrator in writing and provide all

requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

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) 359-1028, TCAMERON@BROWARD.ORG AND ALSO COPY CONTACTFLL@BROWARD.ORG, 3545 SW 2ND AVENUE, FORT LAUDERDALE, FLORIDA 33315.

12.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Contractor and all Subcontractors that are related to this Agreement. Contractor and all Subcontractors shall keep such books, records, and accounts as may be necessary 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 and all Subcontractors shall make same available in written form at no cost to County. Contractor shall provide County with reasonable access to Contractor's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Contractor and all Subcontractors shall preserve and make available, at reasonable times within their respective offices or secure collaboration platforms, 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. This article shall survive any dispute or litigation between the Parties, and Contractor expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County) at County's expense, except for Contractor's audit expenses, including, but not limited to, staff time for such audit. 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. Contractor shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

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. Notwithstanding anything to the contrary contained herein, if an audit or inspection reveals overpricing or overcharges to County of any nature by Contractor in excess of five percent (5%) of the total contract billings reviewed by County, Contractor shall be responsible for the cost of such audit and shall make adjustments for the overcharges and pay liquidated damages pursuant to Section 5.5. 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 all Subcontractor(s).

12.5. Independent Contractor. Contractor is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, 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.

12.6. 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 not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law 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.

12.7. Sovereign Immunity. Except to the extent sovereign immunity may be deemed 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.

12.8. Third-Party Beneficiaries. Neither Contractor nor County intends to primarily or directly 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.

12.9. Notices. Unless otherwise stated herein, for 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 email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County
Attn: Broward County Administrator
Governmental Center East
115 South Andrews Avenue, Room 409
Fort Lauderdale, Florida 33301
Email address: mcepero@broward.org

with a copy to:

Broward County Director of Aviation
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Email address: mgale@broward.org

FOR CONTRACTOR:

Astrophysics Inc
21481 Ferrero Parkway
City of Industry, California 91789
Email address: rdoche@astrophysicsinc.com
CC: LegalDept@astrophysicsinc.com

12.10. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, 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, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence, as determined by County.

12.11. 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, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Contractor is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's 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 legal 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. If 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.

12.12. 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. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

12.13. Compliance with Laws. Contractor, the Products, the System, and the Services must comply with all Applicable Law, including, without limitation and to the extent applicable, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

12.14. Severability. If 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.

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

12.16. 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 any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” 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 subsections thereof, 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. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

12.17. 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 within an article or section of this Agreement, the article or section shall prevail and be given effect.

12.18. 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

12.19. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document

executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Contractor.

12.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

12.21. HIPAA Compliance. County has access to protected health information ("PHI") that is subject to the requirements of 45 C.F.R. Parts 160, 162, and 164 and related regulations. If Contractor is considered by County to be a covered entity or business associate or is required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Contractor shall fully protect individually identifiable health information as required by HIPAA or HITECH and, if requested by County, shall execute a Business Associate Agreement in the form set forth at www.broward.org/Purchasing/Pages/StandardTerms.aspx. The County Administrator is authorized to execute a Business Associate Agreement on behalf of County. Where required, Contractor shall handle and secure such PHI in compliance with HIPAA, HITECH, and related regulations and, if required by HIPAA, HITECH, or other Applicable Law, include in its "Notice of Privacy Practices" notice of Contractor's and County's uses of client's PHI. The requirement to comply with this provision, HIPAA, and HITECH shall survive the expiration or earlier termination of this Agreement. Contractor shall ensure that the requirements of this section are included in all agreements with Subcontractors.

12.22. Payable Interest.

12.22.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and Contractor waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

12.22.2. 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).

12.23. 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.

12.24. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be

deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

12.25. Use of County Name or Logo. Contractor shall not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

12.26. Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Contractor certifies that it has and will maintain a drug-free workplace program throughout the Term.

12.27. Living Wage Requirement. If Contractor is a "covered employer" within the meaning of the "Broward County Living Wage Ordinance," Sections 26-100 through 26-105 of the Code, Contractor shall fully comply with the requirements of such ordinance and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as defined therein. Contractor shall ensure all Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

12.28. Polystyrene Food Service Articles. To the extent applicable, Contractor shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

12.29. Anti-Human Trafficking. By execution of this Agreement by the undersigned authorized representative of Contractor, Contractor hereby attests under penalty of perjury that Contractor does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes; under penalties of perjury, the undersigned authorized representative of Contractor declares that they have read the foregoing statement and that the facts stated in it are true.

12.30. Civil Rights - General. Contractor and its Subcontractors shall comply with pertinent statutes, executive orders, and such rules identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance.

12.31. Civil Rights - Title VII Assurances. Contractor shall comply with the nondiscrimination requirements set forth in **Exhibit F**, to the extent same are applicable by law, rule, or regulation, or federal grant requirements.

12.32. Federal Fair Labor Standards Act (Federal Minimum Wage). This Agreement incorporates by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if fully restated herein. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Contractor must comply with the FLSA and has full responsibility to monitor compliance to the referenced statute

or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

12.33. Occupational Safety and Health Act of 1970. This Agreement incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if fully restated herein. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and its Subcontractors' compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910) ("OSHA"). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor-Occupational Safety and Health Administration.

12.34. Airport Security Requirements. Contractor must comply with the Airport Security Requirements as set forth in **Exhibit G**.

12.35. Airport Issued Identification Media, Public Area Business Purpose Media, and Emergency Response Training. All employees, agents, representatives, contractors, and Subcontractors of Contractor shall obtain Airport Issued Identification Media or Public Area Business Purpose Media, and complete emergency response training, as required by Section 2-43 of the Code. Contractor shall comply with the requirements of Section 2-43 of the Code, including the requirement that Contractor compensate its employees, agents, representatives, contractors, and Subcontractors for time spent completing the emergency response training.

12.36. Retention of Records. If this Agreement is funded in whole or in part by a Federal Department of Transportation grant, in addition to all other retention requirements of this Agreement, Contractor shall preserve all Agreement records for a period of five (5) years after the latter of final payment or the completion of all Services to be performed pursuant to 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 Director of Purchasing, authorized to execute same pursuant to the Broward County Procurement Code, and Astrophysics Inc, signing by and through its duly authorized representative.

COUNTY

BROWARD COUNTY, by and through
its Director of Purchasing

By: Constance Mangan, Asst. Director, on behalf of
Digitally signed by Constance Mangan, Asst. Director, on behalf of
Date: 2024.08.29 13:41:56 -04'00'
Director of Purchasing

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Telephone: (954) 359-6100

By Yesenia Alfonso
Digitally signed by Yesenia Alfonso
Date: 2024.08.20 16:42:52 -04'00'
Yesenia Alfonso (Date)
Assistant County Attorney

By Israel Fajardo
Digitally signed by Israel Fajardo
Date: 2024.08.21 12:06:40 -04'00'
Israel Fajardo (Date)
Assistant County Attorney

YA/ch
Astrophysics Agreement
08/07/2024
80071.0147

AGREEMENT BETWEEN BROWARD COUNTY AND
ASTROPHYSICS INC FOR SUPPORT AND MAINTENANCE

CONTRACTOR

ASTROPHYSICS INC

By: Francois Zayek
Authorized Signer

Francois Zayek, President
Print Name and Title

12th day of August, 20 24

EXHIBIT A - STATEMENT OF WORK

Contractor shall provide the following Services:

1. Project Request.

Contractor shall provide extended warranty for the Support and Maintenance of the Equipment currently located in Terminals 1, 2, 3, and 4 of the Airport. The Equipment is comprised of the X-Ray Machines, hardware, and supporting components which require ongoing Support and Maintenance including, but not limited to, corrective and preventative maintenance. Contractor represents that the System, Products, and Services provided under this Agreement will provide the functionality and solution as specified in this **Exhibit A**.

2. Services Description.

A. Contractor shall provide the following Services including, but not limited to, the following:

- i. Technical phone support Monday through Friday from 7:00am-5:30pm PST (10:00am-8:30pm EST) with a two (2) hour response time window.
- ii. For any issue that may arise concerning the Equipment, Contractor shall assign and send out a field service technician within three (3) Business Days after County provides Contractor with notice (verbal or written notice) of such issue.
- iii. Labor, including, but not limited to, phone support, remote monitoring, technician servicing, and related travel, except for any warranty exclusions identified in Section B of this **Exhibit A**.
- iv. Replacement of defective parts.
 1. Contractor shall be responsible for repairing or replacing any parts deemed to be defective by County during the Term. Contractor shall provide County with replacement parts as requested by County, at no additional cost to County, and such replacement shall be included in the Equipment supported in accordance with the terms of this Agreement.
 2. Contractor further warrants that any replacement part will be free of defects under normal usage for an additional ninety (90) days, or for the remainder of the Term, whichever is later.
 3. Contractor shall be responsible for the disposal of any defective part that is replaced by Contractor. County shall be responsible for the disposal of any other replacement part not deemed defective by County.

4. Contractor shall maintain, organize, store, and manage an appropriate replacement parts inventory. The replacement parts inventory shall include, but not be limited to, sufficient inventory locally stored and readily available for use during the Term.

v. Preventative maintenance.

Contractor shall provide County with one (1) annual preventative maintenance inspection. Contractor shall at a minimum perform the tasks specified in the preventative maintenance checklist, attached hereto as Attachment 1, and perform other tasks as requested by the Aviation Department, for each preventative maintenance inspection.

vi. Radiation survey.

Contractor shall conduct one (1) annual radiation survey to confirm that (i) the Equipment is operating safely and (ii) there is no risk of radiation exposure, by following at a minimum, the radiation survey form, attached hereto as Attachment 2.

B. Contractor shall not provide County with the Services if the Equipment:

i. Malfunctions or is damaged by the expected wear and tear or decline in condition resulting from regular use and exposure over time. The following are specifically excluded under this section: replacement of any lead curtains, Advanced Operator Control Panel ("AOCP") buttons, AOCP membrane, and other consumables.

ii. Malfunctions or is damaged resulting from the use of non-Contractor branded or certified products, accessories, software, or other peripheral equipment.

iii. Malfunctions or is damaged resulting from testing, adjustment, installation, maintenance, alteration, or modification in any way by someone other than Contractor or a Contractor trained certified field service technician.

iv. Malfunctions or is damaged resulting from intentional misuse, negligent acts, or failure to act when proximately caused by anyone other than Contractor, including, but not limited to, improper storage conditions, improper operating conditions, improper operations, handling contrary to Contractor issued instructions, accident, corrosion, fire, moisture, theft, power failure, or fluctuation.

C. Contractor shall have no obligation or responsibility to repair or replace the Equipment if:

- i. The serial plate attached to the Equipment has been removed, defaced, or made illegible.
- ii. The Equipment has been moved from its original installed location except for as permitted in this **Exhibit A**.
- iii. The Equipment was restarted after a period of in-operation lasting longer than two (2) months without prior notification to and instruction by Contractor.
- iv. The Equipment has been exposed to environments below 5°C (41°F) and restarted without prior notification to and instruction by Contractor.
- v. Ownership of the Equipment was transferred to another party, without notice of such transfer provided to and approved by Contractor.
- vi. County is in material breach of this Agreement.

D. **Equipment.**

The System includes the following Equipment provided by County and supported by Contractor as of the Effective Date:

Quantity	Equipment	Comments
1	ASTSB160SM4174	Located at Terminal 1
1	ASTSB160SM4175	Located at Terminal 2
1	ASTSB160SM4176	Located at Terminal 3
1	ASTSB160SM4177	Located at Terminal 4

County may request in writing for Contractor to move the Equipment from their original installed locations, as stated in the table above. The Equipment shall only be moved by Contractor's field service technicians during the next onsite visit by Contractor, unless otherwise agreed to by the Parties.

3. Managerial Approach.

Contractor will ensure that the persons responsible for Contractor's performance of the Services and, to the extent applicable, identified below (collectively, "Key Personnel") are appropriately trained and experienced and have adequate time and resources to perform the Services in accordance with the terms of this Agreement. In order to make a change to the composition of the Key Personnel, Contractor must provide County with thirty (30) days' advance written notice (or as much advance notice as is possible if thirty (30) days' notice is not possible) regarding such proposed changes and the management plan associated with such proposed changes. County shall have the right, in its sole discretion, to approve or reject any proposed changes to Key

Personnel. County shall not be responsible for any additional costs associated with a change in Key Personnel.

The Key Personnel shall be as follows:

Name	Title	Contact Telephone	Contact Email
Rachelle Kassab	Program Manager	909-598-5488	rdoche@astrophysicsinc.com

4. Communication & Reports.

A. Meetings/Communication.

Upon County's request, and at a time agreed to by the Parties, Contractor shall participate in virtual meetings with the Aviation Department regarding any aspect of the System for no more than one (1) hour per month.

B. Required Reporting.

Contractor shall provide County with a detailed summary of the Services provided within fourteen (14) days after completion of the Services, including but not limited to, any preventive maintenance, radiation survey, and/or repairs, an assessment of the issues, corrective action(s) taken by Contractor, and recommendations to County regarding its routine maintenance responsibility.

5. Optional Services.

A. Transition & Disentanglement Services.

The Parties acknowledge and agree that upon the expiration or termination of this Agreement, the good faith efforts of Contractor to facilitate the smooth, efficient, and secure transition of data and services to another provider (or to County, to the extent applicable) without any unnecessary interruption or adverse impact on County operations ("Disentanglement") is a critical objective of the Parties and a material obligation of Contractor under this Agreement. All obligations of Contractor under this Agreement shall be construed consistent with this objective.

At the request of County, Contractor shall provide prompt, good faith, and reasonable assistance to County in disentangling County data, business, and operations from the Products and/or System and, to the extent applicable, transitioning to a new software, system, or provider.

B. Additional Products and Support and Maintenance.

County may from time to time purchase from Contractor any additional products, including without limitation software licenses or subscriptions, firmware, equipment, modules, and/or

support and maintenance. If and to the extent County so elects to purchase such Optional Services via a Purchase Order or a Work Authorization (with an accompanying Statement of Work, if applicable), as County determines appropriate, the Optional Services shall be subject to any applicable not-to-exceed amounts otherwise set forth in this Agreement.

C. Professional Services.

County may from time to time purchase from Contractor any professional services (such as consulting, professional services, training, or other hourly services). If and to the extent County so elects to purchase additional services via a Purchase Order or a Work Authorization (with an accompanying Statement of Work, if applicable), as County determines appropriate, the additional services shall be subject to any applicable not-to-exceed amounts otherwise set forth in this Agreement.

D. Additional Optional Services.

- i. Purchase and install additional Equipment, either the same XIS-6040 160kV model or a newer model.
- ii. Install modifications or additions to any Equipment, including, but not limited to, safety panels.
- iii. Purchase and install replacement parts/equipment (excluding replacement of defective parts that are at no additional cost to County pursuant to this **Exhibit A**).

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

ATTACHMENT 1 - PREVENTATIVE MAINTENANCE CHECKLIST



Preventative Maintenance Checklist

☐ TNC

☐ INTL

Customer: _____		Phone: _____	
Site Location: _____		Claim Number: _____	
Unit Model: _____	Serial Number: _____	Under Warranty? ☐ YES ☐ NO	
Walkthrough Model: _____ & Serial #: _____		Chiller Serial #: _____	
I. Check internally and externally:		Completed	N/A
Clean external panels	☐	☐	Notes: _____
Clean internal panels	☐	☐	Notes: _____
Remove dust build up on PCBs	☐	☐	Notes: _____
Check Curtains for wear and tear	☐	☐	Notes: _____
Clean Fans	☐	☐	Notes: _____
Check X-ray Generator Cable is properly fastened	☐	☐	Notes: _____
II. Check all panels and doors for:			
Missing or damaged hardware	☐	☐	Notes: _____
Alignment	☐	☐	Notes: _____
Secured properly	☐	☐	Notes: _____
III. Check power rollers for:			
Alignment, and adjust as needed	☐	☐	Notes: _____
Oil leaks	☐	☐	Notes: _____
Excessive noise	☐	☐	Notes: _____
IV. Check idler and tension rollers for:			
Alignment	☐	☐	Notes: _____
Excessive noise	☐	☐	Notes: _____
Excessive wear	☐	☐	Notes: _____
V. Check conveyor belt(s) for:			
Belt splice condition	☐	☐	Notes: _____
Excessive or un-even wear	☐	☐	Notes: _____
Physical damage	☐	☐	Notes: _____
Tracking	☐	☐	Notes: _____
VI. Check safety factors:			
Indicator Lights Operate	☐	☐	Notes: _____
Interlock switches are properly adjusted	☐	☐	Notes: _____
Emergency stop switches-Secured and Functional	☐	☐	Notes: _____
VII. Check monitor for:			
Physical damage	☐	☐	Notes: _____
Alignment	☐	☐	Notes: _____
Contrast	☐	☐	Notes: _____
Brightness	☐	☐	Notes: _____
VIII. Check diode plot:			
Adjust gain and position as needed	☐	☐	Notes: _____
IX. Check PC:			
Check disk, defragment and run Antivirus	☐	☐	Notes: _____
Update files Replace CMOS battery <i>(Required)</i>	☐	☐	Notes: _____
X. For 320 kV			
Clean radiator on Chiller	☐	☐	Notes: _____
Check Chiller oil levels and replace once a year	☐	☐	Notes: _____
Grease the HV cables every six months	☐	☐	Notes: _____
Clean the Cathode and Anode	☐	☐	Notes: _____
Clean the AC filter inside X-ray unit	☐	☐	Notes: _____
Check interior/exterior PECs operation	☐	☐	Notes: _____
Test X-ray on Audio Alarm operation	☐	☐	Notes: _____
Monitor Chiller oil Temperature	☐	☐	Notes: _____
XI. Check and record:			
KV (TP 2) _____	Image resolution _____	XrayClient.exe _____	
MA (TP 15) _____	Image penetration _____	Client.exe _____	
Rise Time _____	Software Revision _____		

ASIA: service@astrophysicsasia.com | India: service@astrophysicsindia.com | EMEA: service@astrophysicsme.com
 US and Canada: service@astrophysicsinc.com | Latin America: service@astrophysicslatam.com

DCO# 2920

1 of 2

F-75-07-22 Rev J

ATTACHMENT 2 - RADIATION SURVEY FORM

Radiation Survey Form

Date & Time _____

Surveyed by _____

Model _____

S/N _____

Top

Radiation Meter
Mfg _____

Model _____

S/N _____

Calibration Expires _____

Background Radiation _____

Entry End

LXDA Side

Exit End

XRG Side

- WORK INSTRUCTIONS
- Record radiation measurement in uR/hr.
- Record background radiation.
- Measure radiation 5 cm from external surface, within a 10X10cm averaged area.
- Radiation measurement shall not exceed .100mR.

For corrective actions, the following procedures shall be followed:

- Follow the *Excessive Radiation Leakage Factory Rework instructions* for factory findings.
- Follow the *Excessive Radiation Leakage On-Site Rework Instructions* for on-site findings.

CONVERTING Rems to Sieverts

1 Rem (R) = 0.01 Sieverts = 10 milliSieverts (mSv)
 1 milliRem (mR) = 0.01 milliSieverts (mSv)
 1 microRem (uR) = 0.00001 milliSieverts (mSv)

CONVERTING Sieverts to Rems

1 Sieverts = 100 Rems (R) = 100000 milliRems (mR)
 1 milliSievert (mSv) = 100 milliRems (mR) = 100000 uR
 1 microSievert (uSv) = 0.1 milliRem (mR) = 100 uR

DCO# 1874

F-82-03-48 Rev C

EXHIBIT B - PAYMENT SCHEDULE

The rates specified below shall be in effect for the entire Term, unless otherwise expressly stated below. Any Products, 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**.

Support and Maintenance Fees

Description	Term	Invoicing	Fees
Support and Maintenance Fee	Agreement Year 1	Annually	\$3,910.00/per X-Ray Machine
Support and Maintenance Fee	Agreement Year 2	Annually	\$4,300.00/per X-Ray Machine
Support and Maintenance Fee	Agreement Year 3	Annually	\$4,820.00/per X-Ray Machine
Support and Maintenance Fee	Agreement Year 4 (if extended pursuant to Section 4.2)	Annually	\$5,545.00/per X-Ray Machine
Support and Maintenance Fee	Agreement Year 5 (if extended pursuant to Section 4.2)	Annually	\$6,500.00/per X-Ray Machine

Optional Services

Optional Services costs shall be agreed to by the Parties in the applicable Work Authorization or Purchase Order. Any travel expenses or fees incurred by Contractor under this Agreement shall be the sole responsibility of Contractor, unless otherwise expressly stated in this Agreement, or applicable Work Authorization or Purchase Order.

EXHIBIT C - SUPPORT AND MAINTENANCE MINIMUM STANDARDS

Contractor shall provide County with Support and Maintenance so as to ensure and maintain optimal performance of the Products and System consistent with the Statement of Work (i.e., **Exhibit A** to the Agreement) and the Documentation, which service shall include the following:

- Timely response and resolution of any errors, defects, malfunctions, or other issues affecting the use or performance of the Products or System (collectively, “Events”) in keeping with the Required Response Times stated below, except for errors, defects, malfunctions, or other issues due to reasonable wear and tear to the conveyor belt, leaded curtains, AOCB buttons and membrane, and other consumables on the Equipment;
- Providing and facilitating the installation of updates, upgrades, and releases as they are made available to Contractor’s other clients;
- Notifying County of patches and updates affecting security, and applying, testing, and validating the appropriate patches and updates and/or workarounds on a test version of the application before distribution.
- On-call availability via telephone and e-mail during Business Hours to receive and respond to inquiries or questions from County regarding use, operation, or functionality of the Products or System;
- Emergency availability via telephone and e-mail after hours to receive and respond to specific technical problems and questions relating to the operation or functionality of the Products or System;
- Use of ongoing best efforts to maintain the optimal functioning of the Products and System, to correct programming and coding errors, and to provide solutions to known errors affecting the operation of the software;
- Routine notification to County as it becomes available of new or updated information pertaining to the Products, System, or the Documentation.

Support and Maintenance shall be provided via telephone, electronic communication, on-site, or as otherwise appropriate to address the issue. Any updates, upgrades, releases, or other modifications to the software shall be provided via electronic communication and for download via the Internet, if practicable. To the extent necessary to resolve an Event or other support request, Contractor shall provide support on-site at any office or location of a Broward County agency, as requested by County. Contractor agrees that its personnel shall be suitably trained in the operation and Support and Maintenance of the software. If in the reasonable opinion of County, the personnel provided are not acceptable, Contractor agrees to provide suitable replacements.

Required Response Times. Upon notice by County of an Event, Contractor shall address and resolve the Event consistent with the following priority, response, and resolution levels:

Priority Description	Definition	Response Time After Notice	Resolution Time after Notice
Critical	Event that renders the Products, System, and/or interfaces inoperable or allows unauthorized access.	2 hours during Business Hours; or within 2 hours of beginning of next Business Day if outside of Business Hours	Work until corrected
Severe	Event that results in a significant impairment of performance of the Products or System or impairs essential operations or allows unauthorized access.	2 hours during Business Hours; or within 2 hours of beginning of next Business Day if outside of Business Hours	Work until corrected during Business Hours
Minor	Event that has minor impact to County's business and that does not impact normal operation of the Products or System.	3 hours during Business Hours; or next Business Day if outside of Business Hours	Future patch or release
Minimal	Event that has minimal impact or no impact on County's business.	3 hours during Business Hours; or next Business Day if outside of Business Hours	Future release

Notwithstanding the above-stated schedule, Contractor shall use its continuing best efforts to correct the Event as expeditiously as it can. The priority description for each error or issue shall be reasonably determined by the Contract Administrator.

Records and Reports. Unless otherwise approved by the Contract Administrator, Contractor will maintain records of all Support and Maintenance requested and/or provided, and provide County with online access to an Event ticketing system, which shall include at least the following:

- a) Date, time, and name of contact for each Event;
- b) Date and time of response by Contractor;
- c) Description of Event and analysis of error, defect, or other issue causing Event;
- d) All steps and actions taken to resolve the Event;
- e) Date and time of resolution and County representative notified of resolution; and
- f) All equipment and/or labor costs associated with resolution.

At the request of County, Contractor shall provide monthly reports of the foregoing records as well as statistics of Contractor's average monthly compliance with the Required Response Times.

Failure to Meet Required Response Times. If Contractor fails to meet the Required Response Times, County may offset against any sums due Contractor by One Hundred Dollars (\$100.00) for each Event that Contractor failed to meet the Required Response Time, which amount the Parties

agree is a fair and reasonable approximation of County's negative financial impact caused by Contractor's failure to meet the Required Response Times.

DownTime Maintenance Credit. If a Severe or Critical Event is not resolved or reduced to Minor or Minimal priority level within four (4) Business Days after notice to Contractor, Contractor will refund to County five percent (5%) of the monthly fee (or monthly pro rata equivalent, if the fee is other than monthly) for Support and Maintenance for each additional Business Hour that the Event remains unresolved or at the Severe or Critical priority level, unless the Contract Administrator determines, in their sole discretion, that Contractor utilized best efforts to implement and is actively pursuing an appropriate plan for prompt resolution. Such refunds will be paid within ten (10) days after the earlier of the resolution or reduction of the Event to Minor or Minimal priority level, or, at County's option, may be credited against future sums due to Contractor. This refund shall be in addition to any other remedy that is available in the event of a breach of the Agreement.

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EXHIBIT D - MINIMUM INSURANCE REQUIREMENTS

TYPE OF INSURANCE	ADD L INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form ☒ Commercial General Liability ☒ Premises-Operations ☐ XCU Explosion/Collapse/Underground ☒ Products/Completed Operations Hazard ☒ Contractual Insurance ☒ Broad Form Property Damage ☒ Independent Contractors ☒ Personal Injury Per Occurrence or Claims-Made: ☒ Per Occurrence ☐ Claims-Made Gen'l Aggregate Limit Applies per: ☐ Project ☐ Policy ☐ Loc. ☐ Other _____	☒	☒	Bodily Injury Property Damage Combined Bodily Injury and Property Damage Personal Injury Products & Completed Operations	\$ 5 mil airside \$1 mil landside	\$5 mil airside \$1 mil landside
AUTO LIABILITY ☒ Comprehensive Form ☒ Owned ☒ Hired ☒ Non-owned ☒ Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	☒	☒	Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined Bodily Injury and Property Damage	\$5 mil airside \$300k landside	
☐ EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: ☐ Per Occurrence ☐ Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	☒	☒			
☒ 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	☒	Each Accident	STATUTORY LIMITS	
☒ EMPLOYER'S LIABILITY			Each Accident	\$1mil	
☒ Professional or TECH E&O *** errors and omission coverage needed for the work done through technology or calibrations	☒	☒		\$1 mil	
			Extended Reporting Period of:		
			*Maximum Deductible:		

Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Vendor insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) must be declared to and approved by County and may require proof of financial ability to meet losses. Vendor is responsible for all coverage deductibles unless otherwise specified in the agreement.

CERTIFICATE HOLDER:
 Broward County, Aviation Department
 Fort Lauderdale-Hollywood International Airport
 3545 S.W. 2nd Avenue, Fort Lauderdale, FL 33315
 Security


 Digitally signed
 by Tracy Meyer
 Date: 2023.11.17
 15:18:13 -05'00'

EXHIBIT E - WORK AUTHORIZATION

Agreement: [Title, Date, Contract Number]

Work Authorization No. _____

This Work Authorization is between Broward County and Contractor pursuant to the Agreement. Contractor affirms that the representations and warranties in the Agreement are true and correct as of the date this Work Authorization is executed by Contractor. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

The time period for this Work Authorization will be from the date of County's Notice to Proceed until [____ (____)] days after the Notice to Proceed, unless otherwise extended or terminated by the Contract Administrator.

Services to be provided:

[COMPOSE SIMPLE SUMMARY]

See Exhibit A for additional detail.

The applicable not-to-exceed amount stated in the Agreement for the Optional Services at issue is \$[_____].

The total fee for goods and services under this Work Authorization is \$[_____] ("Total Fee").

The Total Fee shall be invoiced by Contractor upon written acceptance by County of all goods and services required to be provided under this Work Authorization.

(Signatures appear on the following page.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Work Authorization No. __, effective as of the date the last party signs this Work Authorization No. __.

COUNTY

BROWARD COUNTY, by and through
its _____

By: _____
Title

____ day of _____, 202__

Contract Administrator

By: _____
(Date)

Project Manager

By: _____
(Date)

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

By _____
Attorney's name (Date)
Senior/Assistant County Attorney

Contractor

By: _____
Authorized Signer

Print Name and Title

____ day of _____, 20__

EXHIBIT F - NONDISCRIMINATION REQUIREMENTS

A. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest, agrees as follows:

1. *Compliance with Regulations*: Contractor (hereinafter includes Subcontractors) will comply with the **Title VI List of Pertinent Nondiscrimination Acts and Authorities** (“Nondiscrimination Acts and Authorities”), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement, and which include, but are not limited to, the following:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- b. 49 C.F.R. Part 21 (Nondiscrimination in federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987 (P.L. 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189), as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

i. The Federal Aviation Administration's nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, providing that national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

2. *Nondiscrimination:* Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices, when the Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. *Information and Reports:* Contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by County or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to County or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. *Sanctions for Noncompliance:* In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments under the Agreement until Contractor complies; and/or
- b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. *Incorporation of Provisions:* Contractor will include the provisions of Sections A.1 through A.5 above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as County or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a Subcontractor or supplier because of such direction, Contractor may request County to enter into any litigation to protect the interests of County. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

B. Nondiscrimination - 14 C.F.R. Part 152 Requirements. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest, agrees as follows:

1. Contractor agrees to undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Contractor agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

2. Contractor agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, county, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. Contractor agrees that state or county affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 C.F.R. Part 152, Subpart E, only when they fully meet the standards set forth in 14 C.F.R. 152.409. Contractor agrees to obtain a similar assurance from its covered organizations, and to

cause them to require a similar assurance of their covered suborganizations, as required by 14 C.F.R. Part 152, Subpart E.

3. If required by 14 C.F.R. Part 152, Contractor shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. Contractor shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

4. If Contractor is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short- and long-range goals for equal employment opportunity under Part 152, then Contractor shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Contractor shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

5. Contractor shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Contractor shall require its covered suborganizations to keep similar records as applicable.

6. Contractor shall, if required by Part 152, annually submit to County the reports required by Section 152.415, and Contractor shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to Contractor who shall, in turn, submit same to County for transmittal to the FAA.

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EXHIBIT G - AIRPORT SECURITY REQUIREMENTS

Airport Security Program and Aviation Regulations.

Contractor shall observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Contractor, including, but not limited to, all regulations of the United States Department of Transportation, the Federal Aviation Administration, and the Transportation Security Administration. Contractor shall comply with County's Airport Security Program and the Air Operations Area ("AOA") Vehicle Access Program, and any amendments thereto, and with such other rules and regulations as may be reasonably prescribed by County, including any regulations pertaining to emergency training, and shall take such steps as may be necessary or directed by County to ensure that Subcontractor, employees, invitees, and guests of Contractor observe these requirements. If required by the Aviation Department, Contractor shall conduct background checks of its employees in accordance with applicable federal regulations. If as a result of the acts or omissions of Contractor, its Subcontractors, employees, invitees, or guests, County incurs any fines and/or penalties imposed by any governmental agency, including, but not limited to, the United States Department of Transportation, the Federal Aviation Administration, or the Transportation Security Administration, or any expense in enforcing any federal regulations, including, but not limited to, airport security regulations, and the rules and regulations of County, and/or any expense in enforcing County's Airport Security Program, then Contractor shall pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney's fees and all costs incurred by County in enforcing this provision. Contractor shall rectify any security deficiency or other deficiency as may be determined as such by County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other federal agency with jurisdiction. In the event Contractor fails to remedy any such deficiency, County may do so at the sole cost and expense of Contractor. County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

(a) Access to Security Identification Display Areas and Identification Media. Contractor shall be responsible for requesting the Aviation Department to issue Airport Issued Identification Media to all employees including those who are authorized access to Security Identification Display Areas ("SIDA") within the Airport, as designated in the Airport Security Program. In addition, Contractor shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media, the immediate return of the media of Contractor's personnel transferred from the Airport or terminated from the employ of Contractor, and the immediate return of all media of all Contractor's personnel upon expiration or termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Contractor shall comply with the requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. Contractor shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not

returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require Contractor to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

(b) Operation of Vehicles on the AOA: Before Contractor shall permit any employee of Contractor or of any Subcontractor to operate a motor vehicle of any kind or type on the AOA (and unless escorted by an Aviation Department approved escort), Contractor shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of Contractor or of any Subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.

(c) Consent to Search/Inspection: Contractor's vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Contractor and its Subcontractor shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. The foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts, and other unlawful activities at the Airport. For this reason, persons not executing such consent-to-search/inspection form shall not be employed by Contractor or by any Subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Contractor or by any Subcontractor.

(d) Nondisclosure Agreement. If any of Contractor's employees, or the employees of any of its Subcontractors, are required in the course of the work to be performed under this Agreement to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed under federal law, that individual will be required to execute a Sensitive Security Information Non-Disclosure Agreement promulgated by the Aviation Department.

The provisions of this exhibit shall survive the expiration or any other termination of this Agreement.

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