MIAMIBEACH

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**CULTURAL PROGRAMMING AND EVENT PRODUCER SERVICES**

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**DEFINITIONS:**

Bidder *means* any firm or individual submitting an application in response to this ITB. The term bidder may be used interchangeably with applicant and proposer.

Vendor *means* any firm or individual that has been prequalified to supply goods or services to the City.

## SECTION 0100: GENERAL INFORMATION & SCOPE OF WORK

**1. PURPOSE.** The City of Miami Beach (the "City") is seeking applications from firms who wish to participate in a prequalification pool that will be used to solicit various cultural programming and event producer services on an "as needed" basis as specified herein. Interested firms may submit an application indicating its intent to become prequalified. All firms which meet or exceed the criteria established in this solicitation shall be placed on a prequalification list that may be accessed by the Department of Tourism and Culture to obtain price proposals for various cultural programming and event producer services.

The City utilizes Periscope S2G (formerly known as BidSync) (www.periscopeholdings.com or www.bidsync.com) for automatic notification of solicitation opportunities and document fulfillment. Any prospective bidder who has received this ITB by any means other than through Periscope S2G is solely responsible for registering immediately with Periscope S2G to assure it receives any addendum issued to this ITB. Additionally, prior to submittal of the bid, bidder shall verify that it has received and complied with all addenda issued. **Failure to receive an addendum, or comply with an addendum requirement, may result in disqualification of bid submitted.**

**To be considered for the pool of prequalified firms, interested parties must submit a complete Bidder Prequalification Application (Appendix A).**

**2. BACKGROUND AND SCOPE.** The City seeks to prequalify firms which may be engaged in the future to assisting the development and implementation of programmatic strategies, activations and events throughout the City. Miami Beach is a world-class city, with unparalleled cultural and artistic offerings. The City would like to expand on current offerings by partnering with a firm(s) that have the ability to bring original ideas and programming vision to drive tourism and hotel room nights, reduce traffic impact, increase the resident quality of life and enhance the Miami Beach brand.

The City envisions cultural programs and events that enhance the City's reputation as a top cultural destination by:

- creating elevated, family-friendly, and diverse experiences;
- highlighting local businesses and the commercial energy of the City;
- highlighting the City's internationally acclaimed cultural institutions, parks, and beaches;
- attracting a diverse pool of local residents;
- activating and invigorating the economic vitality of commercial districts; and
- promoting events via a local, and national marketing plan.

In addition to the desire to add cultural programming and events through this ITB, it is important to note that the City currently hosts a number of annual programs and events, including but not limited to:

- Fire on the Fourth, Culture Crawl, Miami Beach Art Week, Miami Beach Pride, Art Deco Weekend, and Miami Beach Memorial Day; and
- a variety of artisanal and other markets throughout the City.

Interested parties shall take these dates into consideration and avoid additional activations during these high-impact events.

**2.1 PROCESS OF AWARDING SERVICE ORDER.** The City anticipates establishing an initial Pool of Consultant(s) through this ITB prequalification process.

Pursuant to Sub-section 10, Binding Agreement, bidder agrees that, if its application is accepted, the ITB (inclusive of all attachments, appendixes, exhibits and addenda) and the Proposal (Application) shall constitute a binding Agreement, and all work shall be performed in accordance with the Agreement. The selected Consultant may not include terms or conditions that are additional to this ITB without the written consent of the City. The agreement will be supplemented, upon specific project need, only by individual Service Orders specifying project scopes and payments. Selection into the Pool does not guarantee work and does not provide for exclusive rights to provide these services to the City.

Inclusion in the Consultant Pool is a prerequisite for having an opportunity to submit proposals and obtain work through this Pool. However, there is no guarantee that any or all prequalified firms will obtain Service Orders through this Pool. When a project arises, the City will prepare a scope of work and provide prequalified firms with information regarding the selection process and response requirements, which may include written proposals and oral presentations.

At the City's discretion, Consultants may be dropped from the Pool for: lack of participation, which shall include failure over a reasonable time to propose on Service Order Proposal Requests offered through the Pool; poor performance on a Service Order; being in arrears in obligations to the City; delays in completion of work on a prior Service Order; or for any other reason deemed to be in the City's best interest. Consultant(s) shall maintain the qualifications of the firm and proposed personnel at a standard consistent and equivalent to the qualification submissions submitted in Consultant's Proposal.

**3. OVERVIEW OF PREQUALIFICATION PROCESS.** The figure below is a general overview of the process that the City will utilize to award work pursuant to the prequalification process.




**4. PROCUREMENT CONTACT.** Any questions or clarifications concerning this solicitation shall be submitted to the Procurement Contact noted below. The Bid title/number shall be referenced on all correspondence.

| *Procurement Contact:* | *Telephone:* | *Email:* |
|---|---|---|
| Livia Barcelos, CPP | 305-673-7000 x26858 | LiviaBarcelos@miamibeachfl.gov |

The City Clerk is to be copied on all communications via e-mail at: RafaelGranado@miamibeachfl.gov; or via facsimile: 786-394-4188.

**5. APPROVAL OF PREQUALIFIED STATUS.** Following the review and evaluation of applications by staff, the responsive, responsible bidder(s) meeting all terms and conditions of the ITB will be recommended for award, as deemed in the best interest of the City, to the City Manager for her consideration. It is important to note that an application deemed to not meet the qualifications for prequalification does not eliminate the bidder from resubmitting a subsequent application during the contract term. Once the bidder has corrected the deficiency, a new application may be submitted for the City's consideration.

After considering the staff recommendation for award, the City Manager shall exercise her due diligence and recommend to the Mayor and City Commission the bid(s) that the City Manager deems to be in the best interest of the City. The City Commission shall consider the City Manager's recommendation(s) and may approve or reject the City Manager's recommendation(s). The City Commission may also reject all bids received. In addition to the criteria established in the application, pursuant to Section 2-369 of the City Code, the City may consider the following:

- **The ability, capacity and skill of the bidder to perform the Contract.**
- **Whether the bidder can perform the Contract within the time specified, without delay or interference.**
- **The character, integrity, reputation, judgment, experience and efficiency of the bidder.**
- **The quality of performance of previous contracts.**
- **The previous and existing compliance by the bidder with laws and ordinances relating to the Contract.**

**PREQUALIFIED STATUS IS VALID FOR FIVE (5) YEARS FROM DATE OF THE NOTICE OF PREQUALIFICATION ISSUED BY THE CITY, OR AS OTHERWISE APPROVED BY THE CITY MANAGER.**

**6. ADDITIONAL PREQUALIFIED FIRMS TO BE ADDED TO THE POOL.** After the initial pool of firms is established, the City reserves the right to continue to receive prequalification applications and prequalify additional consultants. The City may also limit the number of firms prequalified and, in doing so, shall select the firm(s) it deems, in its sole discretion, through its City Manager, to be best qualified.

**7. SERVICE DELIVERY EXPECTATIONS.** The City places an emphasis on excellent customer service delivery and expects the prequalified bidder to provide the best possible customer service to any and all awarded projects throughout the term of the contract. The prequalified bidder's project manager is responsible for monitoring the customer service provided to City by prequalified bidder's staff, sales and support teams, and employing, as necessary, corrective measures, to ensure that the prequalified bidder will provide and maintain the highest quality of customer service possible during completion of the project(s). Project-specific deliverables and expectations shall be defined on a project-by-project basis, as specified in each request for proposal.

**8. VOLUME OF WORK TO BE RECEIVED BY BIDDER. No promise of work is given, or should be understood, as a result of a prequalification.** The City reserves the right to purchase any goods and/or services awarded from any resulting agreement, or another governmental contract, or on an as-needed basis through the City's spot market purchase provisions.

**9. STANDARD TERMS AND CONDITIONS.** The City's Standard Terms and Conditions for Service Contracts (available at https://www.miamibeachfl.gov/city- hall/procurement/standard-terms-and-conditions/) are referenced and incorporated herein.

**10. BINDING AGREEMENT.** By virtue of submitting an application for the City's consideration, the bidder agrees that the application shall be considered an offer on the part of the bidder, which offer shall be deemed accepted upon approval of bidder's prequalification status by City Manager or City Commission. Further, bidder agrees that, upon approval of the bidder's application by the City Manager or City Commission, a binding Agreement shall be established between the City and the approved contractor. The Agreement shall be comprised of the following documents, and in the following order:

**First**, the Purchase Order issued by the City; then,

**Second**, the signed Service Order; then,
**Third**, the request for proposal awarded to the vendor; then,
**Fourth** the ITB, including all documents released in connection with the ITB, including all appendixes, whether included herein or released under separate cover.

In case of default on the part of the Successful Bidder, after said award, the City may take such action as it deems appropriate, including legal action, for damages or specific performance.

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APPENDIX A

MIAMIBEACH

# Prequalification Application

## 2022-421-ND
## Cultural Programming and Event Producer Services

PROCUREMENT DEPARTMENT
1755 Meridian Avenue, 3rd Floor
Miami Beach, Florida 33139

MIAMIBEACH

## Prequalification Application Instructions

**Section 1. SUBMITTAL INSTRUCTIONS.** The Prequalification Application will not be considered until it has been submitted completed and executed by a principal of the bidder. Incomplete applications cannot be processed. If requested information is not applicable, please indicate "N/A" or "None. " If answers to questions are lengthier than the spaces that are provided in the application, the answers may be provided on additional pages, which must be attached to the application. All requested documents must also be attached to the application. Failure to attach all requested documents will delay review and approval of the application.

**Submit one (1) electronic copy of the application to Livia Barcelos at liviabarcelos@miamibeachfl.gov.**

The City reserves the right to request clarifications or additional information as deemed necessary to evaluate a bidder's qualifications. When clarifications or additional information is requested by the City, bidder will have three (3) business days to provide, in full, all the requested information. Failure to provide the information within the prescribed time will delay the review process and may result in denial of prequalification.

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

1. Prequalification Application
2. Failure to comply with the Minimum Experience Requirement

**OMITTED OR ADDITIONAL INFORMATION**. **The City reserves the right to request any documentation omitted.** Bidder must submit any omitted documentation within *three (3) business days upon request from the City*, or the application may be deemed non-responsive. Non-responsive applications will receive no further consideration.

**Section 2, DEADLINE FOR SUBMITTAL.** There is no deadline for the submittal of applications. However, the initial review of applications shall take place 21 days after issuance of this ITB. Applications submitted after this date will be reviewed periodically on an on-going basis. The City will endeavor to complete the review of each application within 60 days of receipt.

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## Part A – General Bidder Information.

| | | |
|---|---|---|
| FIRM NAME: | | |
| NO. OF YEARS IN BUSINESS: | NO. OF YEARS IN BUSINESS LOCALLY: | NO. OF EMPLOYEES: |
| OTHER NAME(S) BIDDER HAS OPERATED UNDER IN THE LAST 10 YEARS: | | |
| FIRM PRIMARY ADDRESS (HEADQUARTERS): | | |
| CITY: | | |
| STATE: | ZIP CODE: | |
| TELEPHONE NO.: | | |
| TOLL FREE NO.: | | |
| FAX NO.: | | |
| FIRM LOCAL ADDRESS: | | |
| CITY: | | |
| STATE: | ZIP CODE: | |
| PRIMARY ACCOUNT REPRESENTATIVE FOR THIS ENGAGEMENT: | | |
| ACCOUNT REP TELEPHONE NO.: | | |
| ACCOUNT REP TOLL FREE NO.: | | |
| ACCOUNT REP EMAIL: | | |
| FEDERAL TAX IDENTIFICATION NO.: | | |
| BIDDER IS:<br>_____CORPORATION / _____PARTNERSHIP / _____SOLE PROPRIETORSHIP / _____OTHER (If other, specify:_____) | | |

## Part B – Minimum Experience Requirement.

The Minimum Eligibility Requirements for this solicitation are listed below. Bidder shall submit, the required submittal(s) documenting compliance with each minimum requirement. Bidders that fail to include the required submittals or fail to comply with minimum requirements shall be deemed non-responsive and shall not have its proposal considered.

1. **Proof of Past Experience (General).** Bidder (firm) or principal shall have successfully completed at least three (3) large scale cultural programming or event projects for a public or private sector agency within the last five (5) years. A large-scale cultural programming or event shall be defined as an event with 1000+ attendees, and can take the form of art shows, conventions, live performances, charity events, parades, fundraising events or other similarly scaled events as determined by the City.

| Project | Location | Project Value |
|---|---|---|
| | | |
| Contract Date | Duration of Engagement | Project Lead |
| | | |
| Entity | Contact Person | Contact Information |
| | | Email:<br>Tel #: |
| Project Description (**to include the number of attendees**): | | |
| | | |

| Project | Location | Project Value |
|---|---|---|
| | | |
| Contract Date | Duration of Engagement | Project Lead |
| | | |
| Entity | Contact Person | Contact Information |
| | | Email:<br>Tel #: |
| Project Description (**to include the number of attendees**): | | |
| | | |

| Project | Location | Project Value |
|---|---|---|
| | | |
| Contract Date | Duration of Engagement | Project Lead |
| | | |

| Entity | Contact Person | Contact Information |
|---|---|---|
| | | Email:<br>Tel #: |
| Project Description (**to include the number of attendees**): | | |
| | | |

**Additional references may be attached separately.**

2. **Proof of Past Experience (Local – South Florida Region).** Bidder (firm) or principal shall have successfully completed at least three (3) large scale cultural programming or event projects for a public or private sector agency within the last three (3) years. A large-scale cultural programming or event shall be defined as an event with 1000+ attendees, and can take the form of art shows, conventions, live performances, charity events, parades, fundraising events or other similarly scaled events as determined by the City.

| Project | Location | Project Value |
|---|---|---|
| | | |
| Contract Date | Duration of Engagement | Project Lead |
| | | |
| Entity | Contact Person | Contact Information |
| | | Email:<br>Tel #: |
| Project Description (**to include the number of attendees**): | | |
| | | |

| Project | Location | Project Value |
|---|---|---|
| | | |
| Contract Date | Duration of Engagement | Project Lead |
| | | |
| Entity | Contact Person | Contact Information |
| | | Email:<br>Tel #: |
| Project Description (**to include the number of attendees**): | | |
| | | |

| Project | Location | Project Value |
|---|---|---|
| | | |

| Contract Date | Duration of Engagement | Project Lead |
|---|---|---|
| | | |
| Entity | Contact Person | Contact Information |
| | | Email:<br>Tel #: |
| Project Description (**to include the number of attendees**): | | |
| | | |

**Additional references may be attached separately.**

### Part C – Operational & Management Information.

1. **Main Account Representative.** Attach any other references that demonstrate the applicant's experience.

2. Provide the names of each owner (stockholder, sole proprietor, and partner), director, or officer of the company, below. Submit additional names on a separate sheet if required.

| Owner | Ownership percentage | Directorship/Office type |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

**3**. Is the bidder currently barred by a governmental agency, from bidding as a prime or subcontractor?

☐ YES ☐ NO

| **If yes, state debarment period and the reason(s) for debarment?** |
|---|
| |

**4.** Has the bidder or any of its owners, directors, officers, or agents been convicted of a crime or had a claim that was filed in a court and mediated or arbitrated during the last five (5) years?

☐ YES ☐ NO

| **If yes, why?** |
|---|
| |

**5.** Is an affiliate of the bidder prequalified by the City of Miami Beach for any work?

☐ YES ☐ NO

| **If yes, state the name of the affiliate?** |
|---|
| |

**6.** Is the bidder a parent, subsidiary, or holding company for another company?

☐ YES ☐ NO

**If the answer is "yes," identify the company and type of relationship(s), below:**

| Company | Type of affiliation (parent or subsidiary) | Period of affiliation |
|---|---|---|
| | | |
| | | |
| | | |

**7.** Is an owner, director, officer, or agent of the bidder affiliated with another company?

☐ YES ☐ NO

**If the answer is "yes," provide the following information for each individual and the affiliated company.**

| Individual´s name | Affiliated company´s name | Period of affiliation | Type of affiliation (e.g. officer, director, owner or employee) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

**8.** Is the bidder currently the debtor in a bankruptcy case or file for bankruptcy during the last five (5) years?

☐ YES ☐ NO

**If yes, explain and attach, as applicable, the relevant case and court documents, including (but not limited to): the original petition, including the case number and the date that the petition was filed; a copy of the bankruptcy court's discharge order, and any other document that ended the case, if no discharge order was issued**.

**9.** Has any owner, director, officer, or agent for the bidder, or has any business organization in which any such person was an owner, director, officer, or agent filed for or been discharged in bankruptcy within the past five (5) years?

☐ YES ☐ NO

**If yes, explain and attach a copy of the discharge order, order confirming plan and if a Corporate Chapter 7 case, a copy of the notice of commencement.**

**10.** Has any owner, director, officer, or agent of the bidder owned or managed a company under any other name in the last five (5) years?

☐ YES ☐ NO

**If yes, explain.**

**11.** Has the bidder been assessed or paid any fines on any contract during the past five (5) years, whether the project was publicly or privately owned?

☐ YES ☐ NO

| **If yes, explain.** |
|---|
| |

**12.** Are there currently any liens, suits, or judgments of record pending against any owner, director, officer, or agent for the company that is related to the business activities of a business organization?

☐ YES ☐ NO

| **If yes, explain.** |
|---|
| |

**13.** Has the bidder or any of its owners, officers, or partners ever been convicted (criminal) or found liable (civil) for making either a false claim or material misrepresentation to any public agency or entity?

☐ YES ☐ NO

| **If yes, explain.** |
|---|
| |

**14.** Has the bidder or any of its owners, officers, or partners ever been convicted of any a federal or state crime?

☐ YES ☐ NO

| **If yes, explain.** |
|---|
| |

**15.** Is any officer, director, employee or agent, or immediate family member (spouse, parent, sibling, and child) of any officer, director, employee or agent, an employee of the City of Miami Beach?

☐ YES ☐ NO

**If yes, state name, title and share of ownership**

| Name | Title | Share (%) of Ownership |
|---|---|---|
| | | |
| | | |
| | | |

**16.** Has the bidder, or any officer, director, employee or agent, contributed to the campaign either directly or indirectly, of a candidate who has been elected to the office of Mayor or City Commissioner for the City of Miami Beach?

☐ YES ☐ NO

| **If yes, provide details.** |
|---|
| |

**17. Equal Benefits for Employees with Spouses and Employees with Domestic Partners.** Purchases hereunder are subject to the requirements of Equal Benefits for Domestic Partners Ordinance 2005-3494 that requires bidders with more than 51 employees and City volume greater than $100,000 to provide "Equal Benefits"

to their employees with domestic partners, as they provide to employees with spouses. The Ordinance applies to all employees of a bidder who works within the City limits of the City of Miami Beach, Florida; and the Contractor's employees located in the United States, but outside of the City of Miami Beach limits, who are directly performing work on the contract within the City of Miami Beach.

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

☐ YES ☐ NO

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

☐ YES ☐ NO

C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

| BENEFIT | Company Provides for Employees with Spouses | Company Provides for Employees with Domestic Partners | Company does not Provide Benefit |
|---|---|---|---|
| Health | | | |
| Sick Leave | | | |
| Family Medical Leave | | | |
| Bereavement Leave | | | |

**18. Moratorium on Travel to and the Purchase of Goods or Services from Mississippi.** Pursuant to Resolution 2016-29375, the City of Miami Beach, Florida prohibits the purchase of goods or services sourced in Mississippi. Are any of the products for which the bidder is seeking to be prequalified sourced in Mississippi?

☐ YES ☐ NO

| If yes, which brands. |
|---|
| |

APPENDIX B

MIAMIBEACH

# GENERAL TERMS AND CONDITIONS

## INVITATION TO BID (ITB) 2022-421-ND
## CULTURAL PROGRAMMING AND EVENT PRODUCER SERVICES

## SECTION 1

***DEFINITIONS***

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

City Manager: The chief administrative officer of the City.

City Manager's Designee: The City staff member who is designated by the City Manager to administer this Agreement on behalf of the City. The City Manager's designee shall be Lissette Garcia Arrogante, Director, Tourism and Cultural Development.

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

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

Service Order: A Service Order (see sample in Appendix C) is the document that specifies the scope, costs and schedule (as applicable) of each specific engagement. The Service Order shall detail the required services and deliverables for each engagement. No work may commence without a fully executed Service Order.

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

Proposal Documents: Proposal Documents shall mean City of Miami **Invitation to Bid (ITB**) **No. 2022-421-ND for Cultural Programming and Event Producers** together with all amendments thereto, issued by the City in contemplation of this ITB, and the Consultant's proposal in response thereto ("Proposal"), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: this Agreement; the ITB and the Proposal.

## SECTION 2
## SCOPE OF SERVICES

**2.1** To assist the City to conceive, develop and implement a programmatic strategies, activations and events throughout the City. The City of Miami Beach is a world-class city, with unparalleled cultural and artistic offerings. The City would like to expand on those offerings, by partnering with a firm(s) who have the ability to bring original ideas and programming vision to drive tourism and hotel room nights, reduce traffic impact, increase resident quality of life and enhance the Miami Beach brand.

The City envisions cultural programs and events that enhance the City's reputation as a top cultural destination by:

- creating elevated, family-friendly, and diverse experiences;
- highlighting local businesses and the commercial energy of the City;

- highlighting the City's internationally acclaimed cultural institutions, parks, and
- beaches;
- attracting a diverse pool of local residents;
- activating and invigorating the economic vitality of commercial districts; and
- promoting events via a local, and national marketing plan.

In consideration of the Fee to be paid to Consultant by the City, Consultant shall provide the work and services described in the Service Order (SO) (collectively, "Services"), Exhibit A attached hereto. When the City determines that cultural programming or special events are necessary for any given location within the City, the City will reach out to all prequalified firms, that are in good standing on current or past projects, for proposals. The City will select the proposal and firm that it deems to be in the best interest of the City for the project requirements.

Although Consultant may be provided with a schedule of the available hours to provide its Services and the appropriate location to perform the Services, the City shall not control or have the right to control any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Consultant shall be performed in accordance with the terms and conditions set forth in the Service Order and to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, Consultant should contact the following person:

Lissette Garcia Arrogante, Director
**Tourism & Culture Department**
LissetteArrogante@miamibeachfl.gov
Ph: 305-673-7577

**2.2** Consultant's Services and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in the Service Order. Service Orders must include a detailed list of tasks, sub-tasks, and deliverables (Collectively the Scope) that are consistent with the work and services described in Section 2.

**2.3** Consultant shall only commence any Services, or portions thereof, upon issuance of a Service Order executed by the City Manager or City Manager's Designee.

## SECTION 3
## FEE

**3.1** In consideration of the Services to be provided, Consultant shall be compensated through individual Service Order(s) issued for a particular project, on a "Fixed Fee" or "Not to Exceed" basis. Notwithstanding the preceding, the total fee paid to Consultant pursuant to this Agreement shall be subject to funds availability approved through the City's budgeting process.

**3.2** At the time of negotiation of each Service Order, City and Contractor will determine the tasks, sub-tasks, and deliverables applicable to the project based on the list of Services, and the lump sum or not-to-exceed amounts associated with each Service Order. Consultant shall not commence any Services unless approved in writing by the City Manager or City Manager's Designee.

**3.3** Service Orders shall be executed in accordance with Citywide Procedure No. PO 03.02 (Contract Approval Authority). **Any Service Order for activations in excess of $100,000 shall be subject to the prior approval of the Mayor and City Commission.** Any Service Order not executed in accordance herewith shall be null and void.

**3.4** Reimbursable Expenses are an allowance set aside by the City and shall include actual expenditures made by the Consultant in the interest of the project, provided such expenses are authorized in advance by the City in a Service Order. The Reimbursable Expenses allowance, as specified herein, belongs to, and shall be controlled by the City (i.e. unused portions will be retained by the City and shall not be paid to Consultant). Only approved travel-related expenses authorized by a Service Order will be reimbursed to the Consultant, in an amount not-to-exceed the agreed-upon amount reflected on the corresponding Service Order, and in accordance with Citywide Procedure No. OD. 20.01 (Travel on City Business), as may be updated by the City from time to time ("Reimbursable Expenses").

Notwithstanding the above, any Reimbursable Expenses must be authorized, in advance, in writing, by the City Manager or the corresponding Department's Director. Invoices or vouchers for Reimbursable Expenses shall be submitted to the corresponding Department's Director (along with any supporting receipts and other backup material required to support the amount invoiced, and as requested by the corresponding Department's Director). Consultant shall certify as to each such invoice and/or voucher that the amounts and items claimed as reimbursable are "true and correct and in accordance with the Agreement." Only actual amounts incurred and paid (requiring proof of payment) by the Consultant shall be invoiced, without any markups and/or additions.

### 3.5 INVOICING

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

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

**Accounts Payable Division:** Payables@miamibeachfl.gov

## SECTION 4
## TERMINATION

### 4.1 TERMINATION FOR CAUSE

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

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

**4.2 TERMINATION FOR CONVENIENCE OF THE CITY**

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

**4.3 TERMINATION FOR INSOLVENCY**

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 4.2.

## SECTION 5
## INDEMNIFICATION AND INSURANCE REQUIREMENTS

**5.1 INDEMNIFICATION**

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

The parties agree that one percent (1%) of the total compensation to Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's indemnity agreement. The provisions of this Section 5.1 and of this indemnification shall survive termination or expiration of this Agreement.

**5.2 INSURANCE REQUIREMENTS**

**Insurance requirements will be determined on a project-by-project basis at the time of Service Order (SO).**

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

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

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

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

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

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

**CERTIFICATE HOLDER MUST READ:**

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

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

Certificates-miamibeach@riskworks.com

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

Compliance with the foregoing requirements shall not relieve the vendor of his liability and

obligation under this section or under any other section of this agreement.

## SECTION 6
## LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

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

## SECTION 7
## LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on its liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the "not to exceed" amount of the fee paid to Consultant under this Agreement, less any amount(s) actually paid to Consultant hereunder. Consultant hereby expresses its willingness to enter into this Agreement, with Consultant's recovery from the City for any damages for action for breach of contract to be limited to Consultant's "not to exceed" fee under this Agreement, less any amount(s) actually paid by the City to the Consultant hereunder.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to Consultant for money damages due to an alleged breach by the City of this Agreement, in an amount in excess of the "not to exceed amount" of Consultant's fees under this Agreement, which amount shall be reduced by any amount(s) actually paid by the City to Consultant hereunder.

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

## SECTION 8
## DUTY OF CARE/COMPLIANCE WITH APPLICABLE LAWS/PATENT RIGHTS; COPYRIGHT; AND CONFIDENTIAL FINDINGS

### 8.1 DUTY OF CARE

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

### 8.2 COMPLIANCE WITH APPLICABLE LAWS

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

### 8.3 PATENT RIGHTS; COPYRIGHT; CONFIDENTIAL FINDINGS

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

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

## SECTION 9
## GENERAL PROVISIONS

### 9.1 AUDIT AND INSPECTIONS

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

### 9.2 INSPECTOR GENERAL AUDIT RIGHTS

(A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

(C) Upon ten (10) days written notice to the Consultant, the Consultant shall make all

requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(D) The Inspector General shall have the right to inspect and copy all documents and records in the Consultant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(E) The Consultant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

i. If this Agreement is completely or partially terminated, the Consultant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

ii. The Consultant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

(F) The provisions in this section shall apply to the Consultant, its officers, agents, employees, subcontractors and suppliers. The Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Consultant in connection with the performance of this Agreement.

(G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Consultant or third parties.

**9.3 <u>ASSIGNMENT, TRANSFER OR SUBCONSULTING</u>**

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

## 9.4 PUBLIC ENTITY CRIMES

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

## 9.5 NO DISCRIMINATION

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

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

## 9.6 CONFLICT OF INTEREST

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

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

## 9.7 CONSULTANT'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

(A) Consultant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(C) Pursuant to Section 119.0701 of the Florida Statutes, if the Consultant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Consultant shall:
   (1) Keep and maintain public records required by the City to perform the service;
   (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Consultant does not transfer the records to the City;

(4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Consultant of the request, and the Consultant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Consultant's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

(3) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(E) CIVIL ACTION.

(1) If a civil action is filed against a Consultant to compel production of public records relating to the City's contract for services, the court shall assess and award against the Consultant the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that the Consultant unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Consultant has not complied with the request, to the City and to the Consultant.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Consultant at the Consultant's address listed on its contract with the City or to the Consultant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) A Consultant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE**

**APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

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

**9.8 FORCE MAJEURE**

(A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Consultant or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.

(B) If the City or Consultant's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.

(C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.

(D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.

(E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Consultant of such termination. If the Agreement is terminated pursuant to this section, Consultant shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

**9.9 E-VERIFY**

(A) Consultant shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Consultant shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Consultant shall expressly require any subconsultant performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant during the contract Term. If Consultant enters into a contract with an approved subconsultant, the subconsultant must provide the Consultant with an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an unauthorized alien. Consultant shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.

(B) TERMINATION RIGHTS.

(1) If the City has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Consultant for cause, and the City shall thereafter have or owe no further obligation or liability to Consultant.

(2) If the City has a good faith belief that a subconsultant has knowingly violated the foregoing Subsection 10.9(A), but the Consultant otherwise complied with such subsection, the City will promptly notify the Consultant and order the Consultant to immediately terminate the Agreement with the subconsultant. Consultant's failure to terminate a subconsultant shall be an event of default under this Agreement, entitling City to terminate the Consultant's contract for cause.

(3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.

(4) The City or Consultant or a subconsultant may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1)

or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.

(5) If the City terminates the Agreement with Consultant under the foregoing Subsection (B)(1), Consultant may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.

(6) Consultant is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

## SECTION 10
## NOTICES

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

| | |
|---|---|
| **TO CONSULTANT:** | **TO THE INDIVIDUAL SUBMITTING RESPONSE UNLESS OTHERWISE SPECIFIED.** |
| **TO CITY:** | Lissette Garcia Arrogante, Director<br>Tourism & Culture Department<br>1755 Meridian Avenue, Suite #500<br>Miami Beach, FL 33139<br>LissetteArrogante@miamibeachfl.gov |

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

## SECTION 11
## MISCELLANEOUS PROVISIONS

### 11.1 CHANGES AND ADDITIONS

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

### 11.2 SEVERABILITY

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

### 11.3 WAIVER OF BREACH

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

### 11.4 JOINT PREPARATION

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

and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

## 11.5 ENTIRETY OF AGREEMENT

The City and Consultant agree that this is the entire agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

APPENDIX C

MIAMIBEACH

Sample Service Order Form

INVITATION TO BID (ITB) 2022-421-ND
CULTURAL PROGRAMMING AND EVENT PRODUCER SERVICES

**Service Order**

| Contract # | | Dept. S.O.# | | Change Order # | |
|---|---|---|---|---|---|

| Contractor: | Project Title: |
|---|---|
| | |

By accepting this Service Order, Consultant agrees to provide services pursuant to the attached proposal dated _____and the terms, conditions and rates established in the above-referenced contract between the City and the Consultant. Consultant explicitly agrees that no other terms and conditions shall apply to the work regardless of whether said other terms and conditions are included herein or in any attachment to this Service Order. Any deviation from the scope of work agreed to herein shall require a change order approved by the City.

| | |
|---|---|
| **Estimated calendar days to complete the work:** | |
| **Total amount original Service Order** | |
| **Total amount this Amendment** | |
| **Total amount all previous Amendments** | |
| **Total Amount for Engagement** | |
| **Fee for ancillary items for this Service Order** | |
| **Account Code:** | |

| For City (Name) | Signature | Date |
|---|---|---|
| Reviewed by Procurement: Alex Denis | | |
| Project Administrator: | | |
| Dept Director: | | |
| ACM: | | |
| CM: | | |

| For Contractor (Name) | Signature | Date |
|---|---|---|
| Lead Project Admin: | | |

| **Notes:** |
|---|
| |