



## TRANSPORTATION SERVICES AGREEMENT

*between*

THE TOWN OF MIAMI LAKES

*and*

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*for*

BUS OPERATIONS SERVICES

THIS AGREEMENT is made and entered into as of this 1st day of November, 2016 by and between \_\_\_\_\_, a \_\_\_\_\_ corporation with principal offices at \_\_\_\_\_ (the "Contractor"), and the Town of Miami Lakes, a municipal corporation in the State of Florida, with a principal office located at 6601 Main Street, Miami Lakes, FL 33014 (the "Town").

### WITNESSETH:

**WHEREAS**, on August 15, 2016, the Town issued Request for Proposals ("RFP") 2016-44 Bus Operations Services which includes the Proposal Terms and Conditions, Scope of Services, Proposal Requirements and Selection Process and all associated Exhibits, Forms, and associated addenda, which are collectively referred to as the "RFP 2016-44" and which is attached hereto and incorporated herein as **Exhibit "A;"** and

**WHEREAS**, on \_\_\_\_\_, the Contractor submitted a response to RFP 2016-44, hereinafter referred to as the "Contractor's Proposal," and the terms of which are incorporated herein by reference and which is attached hereto and incorporated herein as **Exhibit "B;"** and

**WHEREAS**, the aforementioned Exhibits "A" and "B" shall collectively be referred to as the "Contract Documents" and are specifically incorporated into this Agreement; collectively this is the "Agreement;" and

**WHEREAS**, the Contractor has agreed to provide Fixed Route Circulator Services and On-Demand Services ("Services") and to be bound by the terms and conditions of RFP 2016-44, attached hereto and incorporated herein as Exhibit "A", and the terms of Contractor's Proposal attached hereto and incorporated herein as Exhibit "B".

**WHEREAS**, the Town desires to procure from the Contractor such services for the Town in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## 1. Definitions

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

**Agreement** means this document, which has been executed by the Contractor and the Town, which contains the terms and conditions.

**Agreement Date** means the date on which this Agreement is effective, which is the date set forth above.

**Additional Services** means bus service requested by the Town that is in addition to the day to day fixed route and on-demand bus service.

**Bus(es)** means the vehicle(s) furnished to the Contractor by the Town for use in providing the Services.

**Contract Documents** means collectively the RFP, the Contractor's Response, the RFP, change orders, amendments, invoices, payment, and all other related documents and attachments issued hereto.

**Contractor** shall mean \_\_\_\_\_ and its permitted successors and assigns.

**Days** shall mean Calendar Days, except where specifically stated to mean Business Days.

**Fixed Route Bus Service** shall mean circulator bus service provided for the fixed route established by the Town and as may be revised from time to time.

**Fixed Route Schedule(s)** means the schedule(s) established for each stop on the fixed route.

**On-Demand Schedule** means the date, time, and locations for pick-up and drop-off provided to the Contractor by the Town.

**Program Manager** shall mean the Town Manager or the Town representative designated by the Town Manager for the day to day management of the Services.

**Town** means the Town Council of the Town of Miami Lakes or the Town Manager, as applicable.

**Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or his/her designee.

The words **Work**, **Services**, or **Program** to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Agreement.

2. In the event there is a conflict between or among the provisions of the Agreement, the order of precedence is as follows:

1. The terms of this Agreement, as may be amended from time to time;
2. Last addendum issued
3. RFP Solicitation No. 2016-44
4. RFP Exhibits, Solicitation No. 2016-44
5. Contractor's Proposal, Solicitation No. 2016-44

3. Contractor shall deliver materials and/or provide services in accordance with the terms of RFP 2016-44, attached hereto and incorporated herein as Exhibit "A" and with the terms of Contractor's Proposal attached hereto and incorporated herein as Exhibit "B".

4. Contractor shall invoice the Town on a monthly basis for all services provided during the prior month. Unless otherwise directed in writing, Contractor will use the Town's standard invoice form. Payments will be made in accordance with the Florida Prompt Payment Act.

5. This Agreement and attachments hereto constitute the entire agreement between the parties hereto, and its provisions shall not be amended, except in writing, after formal approval by both parties.

6. The initial contract period shall commence on November 1, 2016 and expire on March 30, 2018. The Town reserves the right to extend the contract for two (2) additional one (1) year periods, providing both parties agree to the extension and all terms, conditions and specifications remain the same. Contract renewal shall be based on satisfactory performance, mutual acceptance, and determination that the Contract is in the best interest of the Town.

Costs for all services purchased under this contract shall remain firm for the initial contract period. Costs for subsequent years and any extension term years shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed five percent (5%) per year or, whichever is less, the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) (All Items), for the Miami-Ft. Lauderdale, FL area, as published by the Bureau of Labor Statistics, U.S. Department of Labor. The yearly increase or decrease in the CPI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same month one (1) year prior. Any requested price increase shall be fully documented and submitted to the Town at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the CPI or industry costs decline, the Town shall have the right to receive from the Contractor a reasonable reduction in costs that reflect such cost changes in the industry.

The Town may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or any decreases are considered to be insufficient. In the event the Town does not wish to accept the adjusted prices and the matter cannot be resolved to the satisfaction of the Town, the contract can be cancelled by the Town upon giving thirty (30) days written notice to the Contractor.

7. In the event services are scheduled to end because of the expiration of this contract, the Contractor shall continue the service upon the request and written authorization of the Town Manager. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the service at the rate(s) in effect when the Town invokes this extension clause.

8. Funding for this Agreement is contingent on availability of funds and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

9. Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances and regulations that are applicable to the performance of this agreement.

10. Contractor shall comply with all applicable requirements of Florida Department of Transportation (FDOT), United States Department of Transportation (USDOT) and the Federal Transit Administration (FTA), which shall include but not be limited to, regulations for drug and alcohol testing. To the extent that any terms of this Agreement are inconsistent with the FDOT, USDOT or FTA regulations, the requirements of the stricter regulations shall control.

11. The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) at all times while providing Bus Services for public transportation. To the extent that any terms of this Agreement are inconsistent with the ADA, the requirements of the ADA shall control.

12. Contractor shall obtain all applicable local, county, state, and federal licenses necessary for the provision of the bus services in Miami-Dade County, Florida, and the Contractor shall have a Special Services license from the County Passenger Transportation Regulatory Division. The Contractor shall also assist the Town in obtaining any further county, state or federal authorizations.

13. Compliance with Permits and Licenses: Contractor shall perform the Services under this Agreement in compliance with applicable federal, state, and local laws, rules, and ordinances applicable to the Services. Contractor shall be responsible for obtaining, at its own cost and expense, any and all licenses and/or permits required to perform the Services; provided, however, that the Town shall be responsible and pay for all vehicle licensing, fees, registration, and taxes applicable to all vehicles provided by the Town. Contractor will keep the buses free and clear of all levies, liens, and encumbrances, including fines. The Contractor will timely pay all fines and charges due to lack of vehicle license plates or permits, speeding and similar charges that may be lawfully imposed by reason of the Contractor's failure to comply with the rules, regulations and order of these regulatory bodies so as to avoid any impact on the availability of the buses for service.

If fines or other charges for which the Contractor is responsible are levied, assessed, charged or imposed against the Town, the Town will notify the Contractor in writing of this fact. The Town may pay any fine or their charge, whether levied, assessed, charged, or imposed against the Town for the Contractor. In the event payment is made by the Town, the Contractor will reimburse Town within seven (7) calendar days after receipt of written notification by the Town or the Town may recoup the costs incurred from any payments due to the Contractor.

14. Program Plans. The System Safety Program Plan ("SSPP") and the Security Safety Plan ("SPP") submitted as part of the RFP and as approved by FDOT, which is required to ensure compliance with Rule Chapter 14-90, F.A.C. is hereby incorporated into and made a part of this Agreement. Should any conflicts exist in the requirements of this Agreement and the requirements of the SSPP and SPP, the SSPP and SPP will take precedence.

These plans shall serve as the Operations Manual. The Town may, at its sole discretion require additions to the Operations Manual.

#### 15. Contractor's Personnel

- i. Availability: The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified personnel necessary in accordance with the Agreement. The Contractor agrees to adjust staffing levels or to replace any employees if so directed by the Town, should the Town make a determination, in its sole discretion, that said staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for their position. Any staffing changes not requested by the Program Manager shall require prior approval by the Program Manager and compliance with all other personnel requirements.
- ii. Management and Control: All Contractor employees performing services on behalf of Contractor under this Agreement shall at all times be under Contractor's exclusive direction and control. Such employees shall at all times be employees of Contractor and not

independent contractors. Contractor shall pay all wages, salaries and other amounts due its employees, and shall be responsible for all reports and obligations with respect to such employees, such as social security, income tax withholding, unemployment compensation, workers compensation insurance, and similar matters. It is highly desirable that any person hired by the Contractor for this agreement be able to read and write in English and preferably also in Spanish. The Contractor will establish and maintain an effective driver safety program, an occupational health and safety program, a drug testing awareness program and will maintain a drug-free workplace that meets FTA guidelines. In addition to operating and supervising the service, the Contractor's personnel will be responsible for distribution of passenger information materials on the buses and in the field, as directed by the Town. It is Contractor's responsibility to equip and maintain radio communication between supervisor and driver.

Using a standard form furnished by Contractor and subject to approval by the Town, drivers must conduct a pre-trip inspection of the vehicle prior to each shift and must complete the shift with a post-trip inspection of the same vehicle. Supervisor will maintain written records of each pre-trip and post-trip vehicle inspection respective to each driver, shift and vehicle assigned. If the driver changes vehicle mid-shift, a new inspection form must be initiated and completed.

- iii. Drivers: The drivers employed by the Contractor for the purpose of providing the bus services shall be properly licensed operators. The drivers shall possess the qualifications as required by the State of Florida and Miami-Dade County, Florida, including a current commercial driver's license with a passenger endorsement. The Contractor shall ensure that all drivers are familiar with and trained in all policies and procedures, regardless of distribution of written materials to same. The Town may send a representative to any of the Contractor's driver training classes to present the Town's vision of what is expected of the transit system. Drivers shall be fully trained in defensive driving and vehicle handling. Drivers shall be trained in the handling of safety scenarios to include emergency first aid/CPR and in the special skills required to provide transportation to elderly and disabled individuals. Drivers shall be in good physical condition to be able to assist elderly or disabled passengers with ingress and egress from the bus and to assist with the loading and off-loading of packages from the bus. Drivers shall be trained to operate all types of buses (including reserve buses) in service, wheelchair lifts and securement systems, and other equipment that they may be expected to use during service hours. Contractor shall continuously monitor driver performance and shall periodically conduct refresher training, as needed to ensure retention of skills and driver performance. Regularly assigned drivers or trained back-up drivers shall be available and on time daily to ensure consistent and reliable service. Passengers must never be kept waiting, except where schedules are maintained. Drivers are required to have a thorough knowledge of traffic regulations along the route and the schedule time points. Drivers shall be sensitive to ridership comforts, including but not limited to: the interior temperature on their respective vehicle, cleanliness of vehicles, noise levels within vehicles, etc.

Drivers may not use a cellular phone while the bus is in service. Driver must be subject to disciplinary action should this occur. Driver shall not take lunch hour or breaks inside or close by his/her vehicle.

At all times while performing their duties, drivers must maintain a clean and neat appearance. Drivers must also adhere to a code of personal grooming and hygiene established by the Contractor. The Contractor shall periodically provide standardized uniforms at no charge to each driver. The uniform shall identify the name of the Town and Town logo. The uniform shall not include the Contractor's name. The uniforms must be of sufficient quantity to maintain good grooming and be clean and neat and worn at all times during performance of Services. The Contractor will provide a sample of the uniform for the Town Manager's approval prior to use. Any driver not wearing the approved uniform while on duty is prohibited from performing Services under the Agreement. Each driver and bus shall have an accurate timepiece available and in clear sight at all times during vehicle operation. Contractor shall supply and each employee must visibly wear a neck strap or clip-on badge bearing employee's name, photograph and identification number. Contractor must control all identifying materials which are provided to employees; at minimum the Contractor must require that all ID materials must be returned by the employee upon separation.

At a minimum the following shall be in the driver's possession whenever in Service: All current established/published schedules for the Fixed Route Service, incident/accident notification forms, defect cards, a pen/pencil, paper, tape, comment cards and complaint forms, other appropriate material as specified by the Town.

16. Supervision: Contractor shall provide road supervision as required to monitor drivers, buses, quality of service, and adherence to all established routes and time schedules, and to respond to emergency calls. The Contractor shall provide knowledgeable, effective supervisory staff to support the transit operation. The Contractor will recruit, hire, train and employ supervisory personnel, including a site manager, dispatchers and road supervisors for the purpose of overseeing the operation of service, and to ensure safe, reliable transit service. All personnel assigned to this project shall be knowledgeable of the circulator service. All project personnel shall maintain a professional, courteous attitude, answering to the best of their ability any passenger questions regarding the provision of service. Discourtesy, rudeness or the use of profanity will not be tolerated and shall be grounds for immediate removal of the offending employee from performing work within the program. Drivers and dispatchers shall accurately complete and submit the required operating reports daily. Contractor shall provide annual quality/safety workshops for all employees. Contractor shall provide manuals related to personnel policies and procedures, and maintain an employee acknowledgment file with employee signature indicating they have read and fully understand its contents. The Town reserves the right to request additional trainings and meetings with Contractor's personnel.

17. Safety: The Contractor shall develop, implement, and maintain a formal safety program including periodic safety meetings, participation in safety organizations, safety incentives offered by the Contractor to drivers and other employees, and participation in risk management activities under the auspices of the Contractor's insurance carrier or other organization. The Contractor shall provide an outline of said safety program, including periodic updates to the Town. The Contractor will require all drivers, dispatch personnel, and supervisors to participate in the safety program.

18. The Contractor shall not operate a bus under performance of the Services unless it is in sound mechanical condition and safe operating condition, and in conformity with all applicable local, state, and federal safety regulations. The Contractor will clean and fumigate the buses. The interior of the bus shall be maintained in a clean manner by the drivers daily. The Contractor will be expected to

adhere to these standards. The Contractor will ensure that vehicles are operated safely and in a manner that will prevent excessive wear and tear. Any indication of abuse of the buses noted by the Town will be brought to the attention of the Contractor for corrective action. Repairs made necessary as a result of abusive operation of the equipment by the Contractor's personnel will be billed to the Contractor.

19. Each party shall promptly notify the other upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful performance of the Services. The Contractor shall notify the Town of any mechanical or service irregularity which will include, but not be limited to, bus breakdowns, maintenance issues, accidents, incidents, complaints, service delays, detours, schedule adherence problems and video camera operation. Notification should not be more than one (1) hour after an incident involving personal injury and/or property damage and should occur by the end of the service day for other incidents. Verbal notification must be followed by written documentation from the Contractor to the Town.

20. In accordance with the Town's SSPP, attached hereto and incorporated herein, the Contractor shall implement and maintain formal and expedient procedures to respond to all circulator service accidents, disturbances, passenger injuries or fatalities, and any other service interruptions or failures. These shall be reported to the Town in a timely manner. All traffic accidents involving circulator service vehicles, irrespective of injury or damage, shall be immediately reported to the Town of Miami Lakes Police Department. The Contractor shall advise the Town of Miami Lakes Police Department of the accident and request a police unit to investigate the accident and the Town of Miami Lakes Police Department ID Unit to photograph the scene. The Town shall be immediately notified by telephone by the Contractor of any accident or incident, especially those resulting in injury, in loss or damage to the Town and/or private property. Written notification shall follow within twenty-four (24) hours. This written notification shall describe the sequence of events and include reports by driver, attendant, witness, etc. Further, fatalities are to be reported verbally to the Florida Department of Transportation (FDOT) within twenty-four (24) hours of the incident, followed with a written report within the next twenty-four (24) hours. Buses involved in accidents shall be repaired by a Town approved repair shop and billed through Contractor's insurance or deducted from Contractor's invoice.

21. The Contractor shall implement a written dispute resolution process for the rapid resolution of passenger complaints regarding the bus services. The Contractor shall document passenger complaints and describe any actions taken to resolve such complaints and verbally report to the Town's Program Manager the complaints and actions taken within the same business day of any complaint and in writing within twenty-four (24) hours.

22. Press Release or Other Public Communication. The Town may provide schedules, pamphlets, brochures for distribution on the buses, routes, and services. However, under no circumstances shall the Contractor without the express written consent of the Town:

- i. Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Town, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the Town. Such approval may be withheld if for any reason the Town believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- ii. Communicate in any way with any contractor, department, board, agency, council or other

organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the Town; and

- iii. Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the Town.

23. Contractor Non-Performance Deductions. The Contractor acknowledges that time is of the essence in the performance of the Services. The Contractor agrees that the deduction amounts set forth below are fair and reasonable, as a result of the delays described below:

- i. An amount equal to the daily rate shall be deducted for each day the Contractor does not provide Fixed Route or On-Demand passenger service. The daily rate is defined as the total number of anticipated billable service hours for said day.
- ii. An amount equal to one (1) hour of the hourly rate shall be deducted for each occurrence in which the Contractor does not provide Fixed Route Circulator Services in a timely manner in accordance with the Agreement and as documented by Town Staff. Timely is defined as being within five (5) minutes of the scheduled time of arrival to each stop. In the event of violation, Town Staff will provide written notice to the Contractor with a copy to the Town. Exceptions to this provision can be made in the event service is delayed due to an accident or construction on the roadway; however such events must be proactively reported on the day of the occurrence to the Town Manager in order to qualify.
- iii. An amount equal to one (1) hour of the hourly rate for On-Demand service shall be deducted for each passenger the Contractor does not pickup timely for On-Demand Services. Timely is defined as being within ten (10) minutes of the scheduled time.

24. Staging. Upon direction of the Town Manager or designee, the Contractor shall stage the bus(es) at Town Hall or at other such location directed by the Program Manager. The bus(es) shall be utilized during a hurricane watch or warning to assist in the relocation/evacuation of Town residents.

25. Attorney's Fees and Costs. In addition to any other contractual attorney's fees and costs provisions in Exhibit "A" or Exhibit "B" in favor of the Town, Contractor hereby agrees that in the event either the Town or Contractor must initiate litigation to enforce this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs, at all levels of litigation, including trials and appeals, including fees for litigating entitlement to and amount of attorney's fees.

26. Governing Law and Venue. This Agreement shall be interpreted and governed according to the laws of the State of Florida. Any dispute or conflict arising out of or relating to this Agreement must be brought only in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Parties agree such court and such court alone shall have personal jurisdiction and venue over any action relating to this agreement and further agree to waive any rights they may have to challenge the court's jurisdiction over them.

27. Notice. Whenever either party desires to give written notice to the other relating to the Contract, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice shall remain until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery



service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town:  
Alex Rey, Town Manager  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

*With a copy to the following persons at the same address:*  
Christina Semeraro, Procurement Manager  
Brandon Schaad, Director of Planning

For Contractor:

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

Phone:

Email:

28. Records. Contractor will keep adequate records and supporting documentation, which concern or reflect its services hereunder. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with statute. Otherwise, the records and documentation will be retained by Contractor for a minimum of three (3) years from the date of final payment or termination of this Agreement. Town, or any duly authorized agents or representatives of Town, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity shall be conducted only during normal business hours. The Contractor agrees to furnish copies of any records necessary, in the opinion of the Town Manager, to approve any requests for payment by the Contractor.

Contractor shall also comply with the following requirements of the Florida Public Records Law including:

- a. Contractor must keep and maintain all public records required by the Town in order to perform services under this Agreement.
- b. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested public 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.
- c. Contractor shall 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 Agreement term and following completion of the contract if the Contractor does not transfer the records to the Town.
- d. Upon completion of the contract, Contractor shall transfer, at no cost to the Town all public records in the possession of the Contractor, or keep and maintain public records required by the Town to perform the service under this contract. If the Contractor transfers all public records to the Town upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS VIA PHONE (305) 364-6100 x 1138; EMAIL [CLERK@MIAMILAKES-FL.GOV](mailto:CLERK@MIAMILAKES-FL.GOV); OR MAIL AT TOWN OF MIAMI LAKES, 6601 MAIN STREET, MIAMI LAKES, FL 33014.**

29. Audits. The Contractor agrees that the Town or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and its suppliers, which apply to all matters of the Town. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

30. Authority of the Town Manager. The Contractor hereby authorizes the Town Manager to determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Agreement; negligence, fraud or misrepresentation; questions as to the interpretation of the Statement of Work; and claims for damages, compensation and losses.

The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Town Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Town Manager's determination or order. Where orders are given orally they will be issued in writing by the Town Manager as soon thereafter as is practicable.

The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Town Manager. In the event that the Contractor and the Town Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in Article 40 herein. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

31. Independent Contractor. The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

32. No Third-Party Beneficiary. The provisions of this Agreement are for the benefit of the Parties only, and no third party may seek to enforce, or benefit from, these provisions.

33. Force Majeure. Except for the duty to make payments hereunder when due, neither Party shall be liable to the other Party for any losses, expenses, or damages resulting from any delay in performance or from non-performance caused by circumstances beyond the reasonable control of the Party affected, including but not limited to acts of God, fire, flood, explosion, war, terrorism, sabotage (including, but not limited to computer viruses), weather, embargo, traffic, failure of carriers, extended mechanical failure, shortages of utilities, raw materials, equipment or transportation, action or request of governmental authority, strike, labor disputes, picketing, lockout, transportation embargo, civil riot or insurrection or judicial action. The affected Party shall use reasonable commercial efforts to avoid or remove those causes of nonperformance. In the event that either Party is unable to perform its obligation under this Agreement by reason of force majeure, it shall immediately give notice thereof to the other Party.

34. Assignment or Sale of Contract. The performance of this Contract shall not be transferred, pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the prior written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder. The Town may request any information it deems necessary to review any request for assignment or sale of the Contract.

Any transference without Town approval shall be cause for the Town to terminate this Contract for default and the Contractor shall have no recourse from such termination.

Nothing herein shall either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

35. Bankruptcy. The Town reserves the right to terminate this Agreement, if, during the term of the Agreement the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

36. Indemnification and Insurance. The Contractor shall indemnify and hold harmless the Town and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

Contractor, at its own expense, will at all times during the term of this Agreement carry insurance in accordance with the provisions of Article 37 herein. Such insurance shall name Agency as an additional insured. Prior to commencement of the Services under this Agreement, Contractor shall provide Agency with certificates of insurance evidencing the required coverage.

37. Insurance. Without limiting any of the other obligations or liabilities of Contractor, the Contractor must secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance must be qualified to do business in the State of Florida, be rated "B" as to management and "Class V" as to strength or better as rated by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. The insurance carrier must have agents upon whom service of process may be made in the State of Florida. The insurance coverage must be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town will be in excess of the Contractor's insurance and will not contribute to the Contractor's insurance. The insurance coverages must include a minimum of:

**Worker's Compensation and Employer's Liability Insurance:**

Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000 each accident and a waiver of subrogation. The policies must include:

- 1) Waiver of subrogation
- 2) Statutory State of Florida
- 3) Limit of Liability

**Employer's Liability:**

Limit for each bodily injury by an accident must be at least \$1,000,000 policy limit for each accident, per employee, including bodily injury caused by disease.

**Comprehensive Business Automobile and Vehicle Liability Insurance:**

This insurance must be written in comprehensive form and must protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and must cover operation with respect to onsite and offsite operations and insurance coverage must extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability must not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

**Commercial General Liability ("CGL"):**

This insurance must be written in comprehensive form and must protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability must not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

1. Products and/or Completed Operations for contracts with an Aggregate Limit of at least \$500,000 for the term of the Contract. Contractor must maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
2. Personal and Advertising Injury with an aggregate limit of at least \$1,000,000.
3. CGL Required Endorsements: Employees included as insured, Contingent, Liability/Independent Contractors Coverage, Contractual Liability, Waiver of Subrogation, Premises and/or Operations, Loading and Unloading.
4. Excess Liability Insurance (Umbrella Policy) with an aggregate limit and per occurrence limit of not less than \$5,000,000.

Town is to be expressly included as an Additional Insured on Contractor's CGL and Umbrella policies.

#### Certificate of Insurance

Contractor must provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance must not only name the types of policy(ies) provided, but also must specifically cite this Contract and must state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate must be endorsed with a provision that not less than thirty (30) calendar days' written notice must be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.

#### Additional Insured

The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town must be named as Additional Insured under the CGL, business automobile insurance and umbrella policies. Town must be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, must apply on a primary basis and any other insurance maintained by the Town will be in excess of and will not contribute to Contractor's insurance. Contractor's insurance must contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance must apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor is responsible for the payment of any deductible or self-insured retentions in the event of any claim.

#### 38. Contractor Default.

- a. Event of Default. An event of default will mean a breach of the Contract by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, will include but not be limited to, the following:
  - The Contractor has not performed the Services in a timely manner;
  - The Contractor has refused or failed to supply properly skilled staff or provided sufficient quantities of staff to perform the Services;
  - The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - The Contractor has failed to obtain the approval of the Town where required by the Contract;

- The Contractor has failed in the representation of any warranties stated herein;
  - The Contractor has failed to comply with the requirements of the contract;
  - When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work.
- b. Notice of Default-Opportunity to Cure. Where an Event of Default ("Default") occurs under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town; or, the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town.

The Town Manager or designee may also suspend any payment or part thereof or a stoppage order until such time as the issue(s) concerning compliance are resolved.

- c. Termination for Default. Where a Default is not cured within the time specified to cure the Default, the Town Manager in addition to all remedies available by law, may immediately, upon written notice to Contractor, terminate this Contract. Contractor understands and agrees that termination of this Contract under this section will not release Contractor from any obligation accruing prior to the effective date of termination.

In the event of termination by the Town Manager or designee, the Town Manager or designee may immediately take possession of all applicable documentation and data, material, equipment, and supplies to which it is entitled to under the Contract or by law.

Where the Town erroneously terminates the Contract for default, the terminations will be converted to a Termination for Convenience, and the Contractor will have no further recourse of any nature for wrongful termination.

39. Termination for Convenience. In addition to cancellation or termination as otherwise provided for in the Contract, the Town may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice will state the date upon which Contractor must cease all Services under the Contract.

Upon receipt of such notice, unless otherwise directed by the Town, the Contractor must, Stop all Services on the date specified in the notice ("the Effective Date") and;

- Take such action as may be necessary for the protection and preservation of the Town's materials and property;
- Cancel any orders;
- Assign to the Town and deliver to the Town, at a site(s) specified by the Town, any non-cancelable orders that can not otherwise be used by the Contractor except in the performance of this Agreement;
- Take no action that will increase the amounts payable by the Town under the Contract; and take reasonable measures to mitigate the Town's liability under the Contract; and

- All documents, including electronic documents, related to Services authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation will be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract, the Town will pay the Contractor for the actual cost, or the fair and reasonable value, as substantiated by invoice documentation, of any non-cancelable material(s) and equipment that cannot be used elsewhere by the Contractor in the performance of its work.

In no event, will any payments under this paragraph exceed the maximum cost set forth in the Contract and the amount due hereunder may be offset by payments made to the Contractor or any claims made against the Contractor. Contractor will not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience. No payments shall be made to the Contractor until the return of the bus(es) and their subsequent inspection. Payments due the Contractor may be reduced based on the condition of the bus(es) returned to the Town, where the Town has determined that the condition results from the action or lack thereof by the Contractor, exclusive of normal wear and tear. All payments pursuant to this Article are subject to audit in accordance with Article 29.

40. Claims, Disputes and Mediation. Contractor understands and agrees that all claims or disputes between it and the Town upon an alleged violation of the terms of this Contract will be submitted for resolution in the following manner:

Initial effort(s) must be made by the Contractor to resolve any issues with the Project Manager or other Town representative(s) it works with in the coordination and performance of the Services.

Should the initial resolution efforts between the Contractor and the Town's Project Manager not end in a mutual resolution, then the Contractor must notify the Procurement Manager in writing of the claim or dispute, providing all supporting documentation. Upon receipt of the Contractor's notification, the Procurement Manager will review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the claim or dispute, the Contractor must submit an appeal of the dispute in writing to the Town Manager within five (5) calendar days of the Procurement Manager issuing his/her written finding .

Failure to submit such appeal to the Town Manager within the stated timeframe will constitute the Contractor's acceptance of the Procurement Manager's finding.

Upon receipt of said appeal, the Town Manager will review the issues relative to the claim or dispute and issue a written decision.

Any dispute of the Town Manager's decision must be received within fourteen (14) days after the decision is issued.

The dispute will then be submitted to non-binding mediation to attempt to prevent litigation. A certified mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The cost of a certified mediator will be shared on a 50/50

basis by the Town and the Contractor. Should the claim or dispute not be resolved at mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this section. This process must be followed prior to the Contractor instituting any lawsuit against the Town.

41. Town May Avail Itself of All Remedies. The Town may avail itself of each and every remedy stated in the Contract Documents or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

42. Severability. If any part of this contract is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

43. Nondiscrimination. During the performance of this Agreement, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age, or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

44. Negotiated Agreement. This Agreement reflects the negotiation and agreement of the parties. Nothing contained herein shall be interpreted, by implication or otherwise, as inuring to the benefit or the disadvantage of one party in the absence of such mutual negotiation and agreement.

45. Contract Document Contains All Terms. This Agreement and all documents incorporated by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contain herein.

46. Survival. The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the Town under this Agreement that by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. Town of Miami Lakes, through its Town Manager or designee and \_\_\_\_\_, signing by and through its \_\_\_\_\_ (title of individual) duly authorized to execute same.

WITNESS/ATTEST

**Firm's Name Here**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Print Name, Title of Authorized Officer or Official\*

ATTEST:

(Corporate Seal)

Contractor Secretary

(Affirm Contractor Seal, if available)

ATTEST:

**Town of Miami Lakes**, a municipal corporation  
of the State of Florida

\_\_\_\_\_  
*Gina Inguanzo, Town Clerk*

\_\_\_\_\_  
Alex Rey, Town Manager

APPROVED AS TO LEGAL FORM AND  
CORRECTNESS:

\_\_\_\_\_  
Town Attorney

(\*) In the event that the Contractor is a corporation, there must be attached the original of the corporate resolution in the form contained in this Section, of the board of the corporation, authorizing the officer who signs the Contract to do so in its behalf.

**CORPORATE RESOLUTION**

WHEREAS, \_\_\_\_\_, Inc. desires to enter into a contract with the Town of Miami Lakes for the purpose of performing the work described in the contract to which this resolution is attached; and

WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF  
DIRECTORS that the \_\_\_\_\_,  
(type title of officer)

\_\_\_\_\_, is hereby authorized  
(type name of officer)

and instructed to enter into a contract, in the name and on behalf of this corporation, with the Town of Miami Lakes upon the terms contained in the proposed contract to which this resolution is attached and to execute the corresponding performance bond.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)