



## **CITY OF MIAMI SPRINGS, FLORIDA**

**Mayor Maria Puente Mitchell**

**Vice Mayor Jacky Bravo**  
**Councilman Walter Fajet, Ph. D.**

**Councilman Jorge Santin**  
**Councilman Victor Vazquez, Ph.D.**

***Decorum:** "Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the City Council, shall be barred from further audience before the City Council by the Mayor, unless permission to continue or again address the City Council is granted by the majority vote of the City Council members present. In accordance with the foregoing, the City Council has determined that racial or ethnic slurs, personal attacks and comments unrelated to City matters or issues constitute prohibited comments from the podium."*

### **CITY COUNCIL REGULAR MEETING AGENDA**

**Monday, October 23, 2023 – 7:00 p.m.**

**Council Chambers, 201 Westward Drive, Miami Springs, Florida**  
**(In-person and virtually. See pages 3-4 for additional information)**

- 1. Call to Order/Roll Call**
- 2. Invocation:** Vice Mayor Jacky Bravo  
**Pledge of Allegiance:** Audience will lead the Pledge of Allegiance and Salute to the Flag
- 3. Agenda / Order of Business**
- 4. Awards & Presentations:**
  - A) Presentation by Mr. Rob Gordon awarding the City of Miami Springs the STEM City of the Year Award for the City's consistent support of STEM activities at the Recreation Center over the last 10 years
  - B) Proclamation Presentation to PFC Bruce W. Carter MOH Young Marines Executive Officer, Romina Tripichio for Red Ribbon Week (October 23<sup>rd</sup> – October 31<sup>st</sup>)
  - C) Announcing the City Hall Lobby Artist of the Month for October 2023 - Isabella Benitez
- 5. Open Forum:** Persons wishing to speak on items of general City business, may do so in person (*subject to capacity restrictions*) or virtually by following the instructions on pages 3-4. This portion of the meeting also includes any pre-screened video submittals. *The purpose of Open Forum is to encourage residents and members of the public to address their concerns and make comments on any item. The City Council will not enter into a dialogue at this time. City staff will gladly address any question, issue, and/or comment after the meeting. The Mayor is the presiding officer of all Council meetings and shall conduct the meetings accordingly.*
- 6. Approval of Council Minutes:**
  - A) October 9, 2023 – Regular Meeting
- 7. Reports from Boards & Commissions: None.**

## 8. Public Hearings:

A) **Ordinance – Second Reading** – An Ordinance Of The City Of Miami Springs, Florida, Approving A Small-Scale Amendment To The City's Comprehensive Plan, Changing The Future Land Use Map Designation From "Religious Institution" To "Single Family Residential" Of A Certain ±0.22 Acre Parcel Of Land Located At The Intersection Of Esplanade Drive And Hibiscus Drive At Hypothetical 425 Esplanade Drive (Folio No. 05-3119-020-0015); Providing For Authorization; Providing For Transmittal; And Providing For An Effective Date

B) **Ordinance – Second Reading** – An Ordinance Of The City Of Miami Springs, Florida, Approving A Rezoning From P-2 Church Use To R-1B Single Family Residential Of A Certain ±0.22 Acre Parcel Of Land Located At The Intersection Of Esplanade Drive And Hibiscus Drive At Hypothetical 425 Esplanade Drive (Folio No. 05-3119-020-0015); Providing For Authorization; And Providing For An Effective Date

C) **Ordinance – Second Reading** – An Ordinance Of The City Of Miami Springs, Florida, Amending Section 150-070.1, "Miami Springs Gateway Overlay District" Within Article VII, "Business District" Of Chapter 150, "Zoning Code," Of The City's Code Of Ordinances To Amend The List Of Uses Permitted On First Floor Levels Along Road Rights-Of-Way; Providing For Conflicts; Providing For Severability; Providing For Codification; And Providing For An Effective Date

## 9. Consent Agenda: (Funded and/or Budgeted):

A) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Approving The Purchase Of Local Printing Publication Services From The River Cities Gazette, Inc. In An Amount Not To Exceed Budgeted Funds; Providing For Authorization; And Providing For An Effective Date

B) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Approving The Purchase Of Taser 10 Bundles And Related Training And Software Services From Axon Enterprise, Inc. In An Amount Not To Exceed \$199,800; Providing For Authorization; Providing For Implementation; Authorizing The Sale Or Disposition Of Surplus Property; And Providing For An Effective Date

C) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Approving The Purchase Of One 2023 Dodge Charger Police RWD V8 Vehicle From Garber Ford, Inc. In An Amount Not To Exceed \$46,792.00 Utilizing The Terms And Conditions Of The Florida Sheriffs Association Contract No. Fsa23-Vel 31.0 Pursuant To Section 31-11(E)(5) Of The City Code; Declaring Certain Vehicles As Surplus Property; Authorizing The Sale Or Disposition Of Surplus Property; Providing For Implementation; And Providing For An Effective Date

D) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Approving The Selection Of Ae Engineering, Inc. For Construction Engineering And Inspection (CEI) Services For The Oakwood Drive And East Drive Stormwater And Roadway Improvement Project Pursuant To Request For Qualifications No. 06-22/23; Authorizing The City Manager To Enter Into An Agreement With The Consultant Relating To The Same In An Amount Not To Exceed \$569,547; And Providing For An Effective Date

E) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Selecting Roadway Construction, LLC For Construction Of The Oakwood Drive And East Drive Stormwater And Roadway Improvement Project Pursuant To Invitation To Bid (ITB) No. 08-22/23; Authorizing Negotiation And Execution Of A Construction Contract In An Amount Not To Exceed \$5,749,419.84; And Providing For An Effective Date

F) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Providing For The First Budget Amendment To The Fiscal Year 2023-2024 General Fund, Special Revenue, And Capital Projects Fund Budgets By Re-Appropriating Reserved Fund Balances To Fund Open Encumbrances Through September 30, 2023; And Providing For An Effective Date

G) **Resolution** – A Resolution Of The Mayor And The City Council Of The City Of Miami Springs, Florida, Approving Amendment No. 1 To The Professional Services Agreement With Caballero Fierman Llerena & Garcia, LLP For The City's Annual Financial Audit Services; Providing For Authorization; And Providing For An Effective Date

**10. Old Business: None.**

**11. New Business: None.**

**12. Other Business:**

A) Request to Cancel the second meetings in November (November 27<sup>th</sup>) and December (December 26<sup>th</sup>)

**13. Reports & Recommendations:**

A) City Attorney

B) City Manager

C) City Council

**14. Adjourn**



**CITY OF MIAMI SPRINGS  
PUBLIC MEETING NOTICE**

The City of Miami Springs will hold a Council meeting on:  
**Monday, October 23, 2023 at 7:00 p.m. at  
City Hall, Council Chambers, 201 Westward Drive, Miami Springs, Florida  
(Physical Meeting Location)**

The meeting agenda is available online at: <https://www.miamisprings-fl.gov/meetings>

Elected officials and City staff will participate from the physical meeting location. Members of the public may attend the meeting in person at the physical meeting location, or, alternatively, may watch or call in to the meeting by following these instructions:

**ATTEND THE MEETING IN PERSON AT THE PHYSICAL MEETING LOCATION**

The meeting will be held in person at the physical meeting location stated above. Admission to the physical meeting location is on a first-come, first-serve basis and space is limited. Doors will open 30 minutes prior to the meeting start time. The City highly encourages those in attendance to wear facial coverings and abide by social distancing as recommended by the CDC.

**WATCH AND/OR PARTICIPATE IN THE MEETING**

- **ZOOM:** Meeting ID 863-9512-4146
- **YouTube:** <https://www.youtube.com/channel/UC2at9KNnqUxZRSw1UkhdHLQ/featured>
- **From your computer/mobile device:** <https://www.miamisprings-fl.gov/meetings>

**CALL IN TO THE PUBLIC MEETING**

**Dial 305-805-5151 or 305-805-5152**

*(Alternatively, you may also dial the phone numbers below to join the meeting:  
1 (646) 558 8656, 1 (301) 715 8592, 1 (312) 626 6799, 1 (669) 900 9128, 1 (253) 215 8782,  
1 (346) 248 7799) then input the Meeting ID: 863-9512-4146, followed by #.*

**There is no participant ID. Press # again.**

Any person requiring special accommodations to access this proceeding is asked to advise the City at least 2 days before the proceeding by contacting the City Clerk at [cityclerk@miamisprings-fl.gov](mailto:cityclerk@miamisprings-fl.gov)

**PUBLIC COMMENTS WILL BE ACCEPTED BY THE FOLLOWING MEANS:**

**EMAILED COMMENTS:** Members of the public may email their public comments to the City in advance of the meeting. Please email the City at [cityclerk@miamisprings-fl.gov](mailto:cityclerk@miamisprings-fl.gov) by 12:00 p.m. on the day of the meeting with the subject line "PUBLIC COMMENT" and the following information in the body of the email: Your Name, Address, if you are a hired Consultant or City Employee, and/or if you are engaged in Lobbying Activities and/or representing an organization. Please limit your comments to no more than 350 words. Public comments received via email may be read into the record during the public comment portion of the agenda, if any.

**IN-PERSON COMMENTS:** Members of the public may attend the meeting at the physical meeting location stated above and deliver their public comments in person during the public comment portion of the agenda.

**VIRTUAL COMMENTS:** *Public comments will also be accepted during the meeting using the virtual meeting platform as follows:*

**By telephone:** To ask to speak during the meeting, call in to the meeting using the instructions above. Please press \*9 from your telephone and you will be called on to speak during public comments and identified by the last 4-digits of your telephone number.

During the meeting, when your name or the last 4-digits of your telephone number is called, you will be unmuted and you may deliver your comments.

Please be sure to be in a quiet area to avoid unnecessary noise. Please provide the following information before delivering your comments: Your Name, Address, if you are a hired Consultant or City Employee, and/or if you are engaged in Lobbying Activities and/or representing an organization.

A time limit may be imposed for each speaker during public comment.  
Your cooperation is appreciated in observing the time limit.

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the City Council, shall be barred from further audience before the City Council by the Mayor, unless permission to continue or again address the City Council is granted by the majority vote of the City Council members present. In accordance with the foregoing, the City Council has determined that racial or ethnic slurs, personal attacks and comments unrelated to City matters or issues constitute prohibited comments when addressing the Council during public comments.

#### **PUBLIC RECORDS**

The meeting will be recorded for later viewing and is a public record. The virtual chat, if any, will be saved and is a public record. Minutes of the meeting will be taken and will be made available.

#### **NOTICE PURSUANT TO §286.0105, FLORIDA STATUTES**

**IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.**

#### **AMERICANS WITH DISABILITIES ACT**

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this proceeding is asked to advise the City at least 2 days before the proceeding by contacting the City Clerk's Office at 305-805-5006.

#### **LOBBYING ACTIVITIES**

In accordance with Section 33-01 of the City Code, adopting Section 2-11.1(s) of the Miami-Dade County Code, any person engaging in lobbying activities, as defined therein, must register at the City Clerk's Office before addressing the City Council on the agenda items or engaging in lobbying activities. Specifically, all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the City Council; (2) any action, decision, recommendation of any City Board or Committee; or (3) any action, decision or recommendation of City personnel during the time period of the entire decision-making process on such action, decision or recommendation which will be heard or reviewed by the City Council, or a City Board or Committee shall register with the City before engaging in any lobbying activities on forms prepared for this purpose and shall state under oath his or her name, business address, the name and business address of each person or entity which has employed said registrant to lobby, and the specific issue on which he or she has been employed to lobby. A copy of the lobbyist registration form is available from the Office of the City Clerk and online at: <https://www.miamisprings-fl.gov/cityclerk/lobbyist-registration-form-0>.

**Have questions or need additional information?**

**Write:** [cityclerk@miamisprings-fl.gov](mailto:cityclerk@miamisprings-fl.gov)

**Call:** 305-805-5006

**Mail:** 201 Westward Drive, Miami Springs, FL 33166

## Erika Gonzalez-Santamaria

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**From:** Shannen M. Jaser  
**Sent:** Thursday, October 5, 2023 10:22 AM  
**To:** Erika Gonzalez-Santamaria; Tammy Romero; JC Jimenez  
**Subject:** Art @ City Hall

Good morning, Erika.

I hope this email finds you well. I wanted to bring to your attention a biography that Melissa, Isabella's mother, has sent me regarding her daughter's artwork. Isabella's artwork will be showcased here this month, and I will be hosting a reception for her on Monday, October 23rd.

Could you please add Isabella to the agenda for the upcoming council meeting? Thank you 😊

**"Isabella Benitez is a Miami Springs resident and an 8th grader at Blessed Trinity. Isabella loves the visual and performing arts. In her spare time, she enjoys sketching cartoons and creating art based on Disney characters and Broadway musicals. You can also find her in our local community theatre acting on stage. Isabella is a local Girl Scout (Troop 2564) and enjoys serving the community through volunteer work and service projects. Next year Isabella plans to attend a high school where she can focus on the digital arts."**



Shannen Jaser  
**Public Information and Professional Services Specialist**

*City of Miami Springs*

*Office Number : 305-805-5010*

*City Cell: 786-606-1282*





## **City of Miami Springs, Florida**

City Council Meeting

Regular Meeting Minutes

Monday, October 9, 2023 at 7:00 p.m.

City Hall, Council Chambers, 201 Westward Drive, Miami Springs, Florida

In-Person/Virtual Council Meeting

1. **Call to Order/Roll Call:** The meeting was called to order by the Mayor at 7:00 p.m.

Present were the following:

Mayor Maria Puente Mitchell

Vice Mayor Jacky Bravo

Councilman Jorge Santin

Councilman Walter Fajet, Ph.D.

Councilman Victor Vazquez. Ph.D.

City Manager JC Jimenez

Assistant City Manager Tammy Romero

City Clerk Erika Gonzalez-Santamaria

City Attorney Haydee Sera

City Attorney Roger Pou (via Zoom)

City Planner Alex David

2. **Invocation:** Offered by Councilman Jorge Santin  
**Pledge of Allegiance:** The audience led in the pledge.

3. **Agenda / Order of Business:**

4. **Awards & Presentations:**

A) Yard of the Month Award for October 2023 – 1110 Oriole Avenue – Yaset Fernandez

**Mayor Mitchell announced the Yard of the Month for October. The Fernandez Family were not available to receive the award. City Clerk Erika Gonzalez stated that she will deliver the award to the family.**

5. **Open Forum:** The following members of the public addressed the City Council:  
**Alberto Gomez, 1985 Westward Drive.**

6. **Approval of Council Minutes:**

A) September 25, 2023 – Special Meeting

**Councilman Vazquez moved to approve the minutes of September 25, 2023 Regular**

**Meeting. Councilman Fajet seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.**

**7. Reports from Boards & Commissions: None at this time.**

**8. Public Hearings:**

**A) Ordinance – First Reading – An Ordinance Of The City Of Miami Springs, Florida, Approving A Small-Scale Amendment To The City's Comprehensive Plan, Changing The Future Land Use Map Designation From "Religious Institution" To "Single Family Residential" Of A Certain ±0.22 Acre Parcel Of Land Located At The Intersection Of Esplanade Drive And Hibiscus Drive At Hypothetical 425 Esplanade Drive (Folio No. 05-3119-020-0015); Providing For Authorization; Providing For Transmittal; And Providing For An Effective Date**

**City Attorney Haydee Sera read the Ordinance by title. City Planner, Alex David of CGA addressed the City Council. Javier Vazquez, representing the applicant, addressed the City Council. The Mayor opened the public hearing, there were no speakers at this time. The Mayor closed the public hearing.**

**Councilman Fajet moved to approve the Ordinance on first reading. Councilman Vazquez seconded the motion. The motion carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.**

**B) Ordinance – First Reading – An Ordinance Of The City Of Miami Springs, Florida, Approving A Rezoning From P-2 Church Use To R-1b Single Family Residential Of A Certain ±0.22 Acre Parcel Of Land Located At The Intersection Of Esplanade Drive And Hibiscus Drive At Hypothetical 425 Esplanade Drive (Folio No. 05-3119-020-0015); Providing For Authorization; And Providing For An Effective Date**

**City Attorney Haydee Sera read the Ordinance by title. City Planner, Alex David of CGA addressed the City Council. Javier Vazquez, representing the applicant, addressed the City Council. The Mayor opened the public hearing, there were no speakers at this time. The Mayor closed the public hearing.**

**Councilman Vazquez moved to approve the Ordinance on first reading. Vice Mayor Bravo seconded the motion. The motion carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.**

**C) Resolution – A Resolution Of The City Council Of The City Of Miami Springs, Florida, Approving A Tentative Plat Application By R & J Portfolio, LLC For Property Located At The Intersection Of Esplanade Drive And Hibiscus Drive At Hypothetical 425 Esplanade Drive (Folio No. 05-3119-020-0015); Providing For Conditions; Providing For Violations; Providing For Authorization; And Providing For An Effective Date**



City Attorney Haydee Sera read the Resolution by title. City Planner, Alex David of CGA addressed the City Council. Javier Vazquez, representing the applicant, addressed the City Council. The Mayor opened the public hearing, there were no speakers at this time. The Mayor closed the public hearing.

Councilman Fajet moved to approve the Resolution. Vice Mayor Bravo seconded the motion. The motion carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.

D) **Ordinance – Second Reading** – An Ordinance Of The City Of Miami Springs, Florida, Amending Section 150-070.1, “Miami Springs Gateway Overlay District” Within Article VII, “Business District” Of Chapter 150, “Zoning Code,” Of The City’s Code Of Ordinances To Amend The List Of Uses Permitted On First Floor Levels Along Road Rights-Of-Way; Providing For Conflicts; Providing For Severability; Providing For Codification; And Providing For An Effective Date

City Attorney Haydee Sera read the Ordinance by title. The Mayor opened the public hearing, the following members of the public addressed the City Council: Michael Gavila, Alina Garcia, 10165 SW 100 Avenue; Dr Hernandez, 1161 Oriole Avenue; Tomas Matz, 349 DeLeon Drive; Ernie Thomas, 29 Palmetto Drive; Frank Espinosa, 5000 SW 186 Avenue; Nicholas Camps, 246 Apache Street, Francois Zayas, 373 Westward Drive; Deme Mekras, 7480 Bird Road; Jhovan Rojas, 250 S. Royal Poinciana Blvd.; Elena Rodriguez, 229 Laurel Way; Maribel Martin, 44 Curtiss Parkway. The Mayor closed the public hearing.

Councilman Fajet moved to defer the Ordinance on second reading to a future meeting. Councilman Vazquez seconded the motion. The motion carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.

**9. Consent Agenda: (Funded and/or Budgeted):**

A) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Approving An Agreement With Full Moon Creative LLC For Audiovisual Services Necessary For The Broadcast Of City Council Meetings, Workshops, And Related Meetings In An Amount Not To Exceed Budgeted Funds; Providing For A Waiver Of Competitive Bidding; Providing For Authorization; And Providing For An Effective Date

Councilman Fajet moved to approve the Consent Agenda. Councilwoman Vazquez seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.

**10. Old Business: None at this time.**

**11. New Business: None at this time.**

**12. Other Business:**

A) Vote of Confidence for the City Manager as Required by Section 4.02 (2) of the City Charter

**Councilman Vazquez moved to give the City Manager a vote of confidence. Councilman Fajet seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Bravo, Councilman Santin, Councilman Fajet, Councilman Vazquez and Mayor Mitchell voting Yes.**

**13. Reports & Recommendations:**

A) City Attorney

**City Attorney Haydee Sera had no report at this time.**

B) City Manager

**City Manager JC Jimenez thanked the City Council for the vote of confidence and looks forward to working with the City Council. He stated that he is currently looking into the possibility of online payments for different City departments. He stated the Town Center construction is still underway. He pointed out that he will get with the Building Official and the Planning Department to make sure all areas of the project are completed and requirements are met. He assured the City Council that he will keep them in the apprised of any changes or status changes on the new construction. Assistant City Manager Tammy Romero provided a list of upcoming City events and stated more information on City events are on the City's official website.**

C) City Council

**Vice Mayor Bravo is looking forward to the upcoming Gateway Ordinance workshop. She requested a moment of silence for Israel. She further thanked her colleagues for a productive meeting.**

**Councilman Fajet attended Yvonne Schonberger's service recently. He requested if the City can look into possibly designating a portion of East Drive in Mrs. Schonberger's honor. He stated that her legacy in conserving the City's historic archives and décor is admirable and deserving.**

**Councilman Vazquez also attended the services of Yvonne Schonberger and supports Councilman Fajet's request for dedicating a portion of East Drive to her. Councilman Vazquez stated that he continues to promote civic service and recently was invited by Villanova University to speak on civics and history. He stated he truly enjoys what he does.**

**Councilman Santin confirmed that we will expedite the uses for the Gateway**

**Ordinance.** He requested consensus from Council to direct the City Manager to speak to the Centennial Committee and Historical Society to celebrate the 100-year birthday of the Golf Course. He requested that the Golf Course's grand re-opening could coincide with the golf's 100<sup>th</sup> birthday.

**Mayor Mitchell** shared the same sentiment with the Vice Mayor towards Israel, as to the events that saddening and concerning, she hopes for peace soon. Mayor Mitchell attended the Florida League of Cities Legislative, Taxation and Financing Committee meeting last week to determine which bills will be supported by the League. She stated that at the meeting the State Economic and Demographic Research Department provided a presentation to create a data sharing program or application so that municipalities can access and share financial impacts in different cities.

#### **14. Adjourn**

There being no further business to be discussed the meeting was adjourned at 9:01 p.m.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, MMC  
City Clerk*

*Adopted by the City Council on  
This 23rd day of October, 2023.*

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*Maria Puente Mitchell, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE CITY HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE CITY FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.



# City of Miami Springs

201 Westward Drive Miami Springs, FL 33166  
Phone: (305) 805-5034 Fax: (305) 805-5036 Website: www.miamisprings-fl.gov

## CITY OF MIAMI SPRINGS PLANNING DEPARTMENT

### STAFF REPORT

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**TO** Zoning and Planning Board

**FROM** Alex David, Director of Miami-Dade Office  
Calvin, Giordano & Associates, Inc.  
Planning Consultant

**CC:** Silvia Vargas; Antonio Augello  
Calvin, Giordano & Associates, Inc.

**DATE** October 2, 2023

**SUBJECT** Future Land Use Map amendment – 425 Esplanade Drive

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<b>Case No.</b>	01-ZP-21 (FLUM)
<b>Applicant(s)</b>	R & J Portfolio LLC ("Applicant")
<b>Address</b>	425 Esplanade Drive ("Property")
<b>Folio Number(s)</b>	05-3119-020-0015
<b>Zoning District</b>	P-2

### Property

The Property consists of an asphalt paved parking lot located at the SE corner of S. Esplanade Drive and Hibiscus Drive. The parcel is roughly square in shape and 9,746 square feet in size. The full legal description is the following:

*Tract "A" of "MIAMI Springs Baptist Church", a subdivision according to the Plat thereof, as recorded in Plat Book 76, Page 71, of the Public Records of Miami-Dade County, Florida; Less and Except the Southwesterly 91.00 feet of said Tract "A" as conveyed in Warranty Deed recorded in Official records Book 32884, Page 3726.*



## Proposal

The Applicant is proposing a FLUM amendment from Religious Institutional to Single Family Residential. The Applicant is also requesting a Rezoning – from P-2 (“Church Use”) to R-1B (“Single Family Residential”) – and a Replat to ultimately permit the construction of a single-family dwelling unit.

The current Land Use Category allows the following:

**Religious Institutional Category:** This category of land use allows facilities for religious and similar institutions, including, but not limited to, houses of worship and related schools. Public parks and public utilities necessary to serve the uses within this category are also permitted. Buildings within this category shall be limited to a floor area ratio of 0.5.

As designated on the City Future Land Use Map and defined above a standalone parking lot would not be an allowed use.

The proposed Land Use Category amendment would allow the following:

**Single Family Residential Category:** This category of land use allows single family detached homes on lots of at least 7,500 square feet of net area. Other uses allowed on land within this category include public parks, primary and secondary schools, houses of

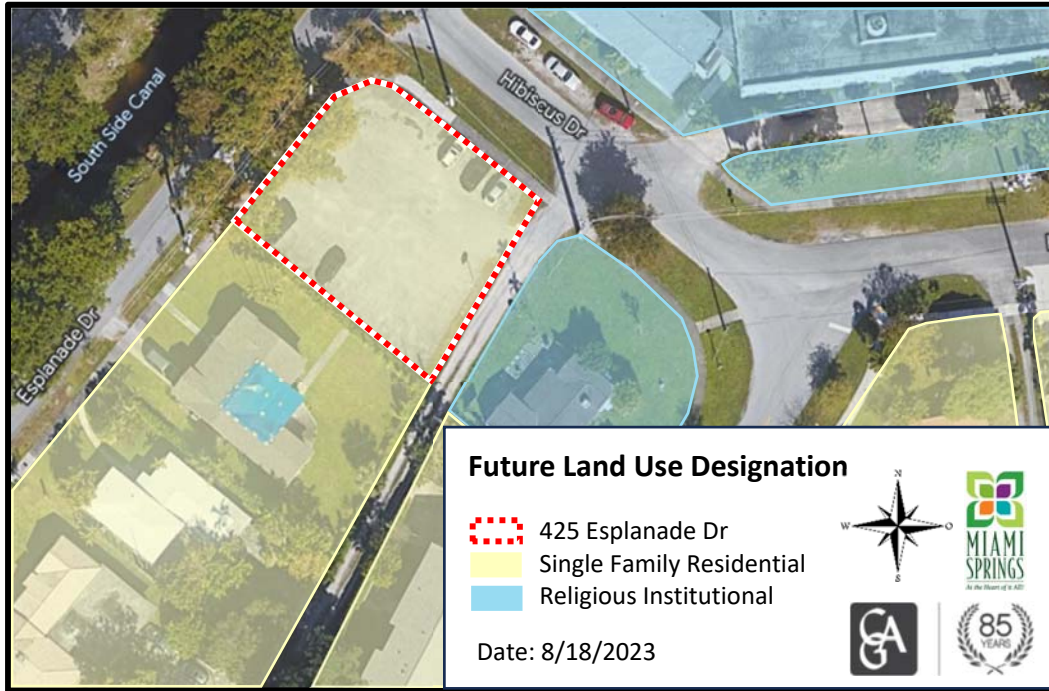
worship and public utility facilities necessary to serve the homes within this category. The 7,500 square foot lot size limitation shall not preclude the continued use, development or redevelopment of a home on a smaller lot where such lot or parcel was platted or otherwise of record prior to the adoption of this Plan. This land use category may be effectuated by one or more zoning districts, provided that all are consistent with the use provisions and none exceed the density restrictions stated herein. In addition to the 7,500 square foot minimum lot size, development shall not exceed 5 dwelling units per acre, including rights-of-way.

### Future Land Use Map Amendment

From:



To:



### Process

The FLUM amendment requires a Public Hearing with the City Council sitting as the Local Planning Agency (LPA). The Ordinance 1<sup>st</sup> Reading will take place at a subsequent City Council hearing. Advertised notice ten (10) days prior to the Local Planning Agency (LPA) Hearing and the Ordinance 1<sup>st</sup> Reading shall be required. This would also apply for the Ordinance 2<sup>nd</sup> Reading, where adoption of the item would take place.

The review process would require the Applicant to prove the proposed use is consistent with the goals, objectives, and policies of the City's Comprehensive Plan, compatible with the character and purpose of the surrounding Future Land Use designations, and would not create unfavorable conditions that could affect the public health, safety, and welfare of the City and its residents.

### History

In 1962, the Property was incorporated into Tract "A" of "Miami Springs Baptist Church" and used as a parking lot. In 2018 and 2020, Tract "A" was conveyed by two deeds, resulting in the division of Tract A into two parcels: Parcel 1, 9,746 square feet in size with the asphalt parking lot (the Property), and Parcel 2, 10,685 square feet in size, with a single-family residence. The existing house on Parcel 2 was originally used as a residence for the Church's Pastor, and was sold by the Church in 2018 to Christopher Anderson and Rosario Molina, keeping the same use. By subdividing Tract A via deeds and without



going through the proper subdivision requirements, an illegal subdivision was created, which prevents both properties from obtaining building permits.

In 2018, Parcel 2 located at 427 Esplanade Drive was re-designated from Religious Institution to Single Family Residential on the City's FLUM and rezoned from P-2, Church Use to R-1B by Ordinances 1103-2018 and 1104-2018, respectively. At the time, the City was the applicant on behalf of the Miami Springs Baptist Church. When the 2018 ordinances were adopted, the staff report supporting the ordinances explained that "The Church also owns [hypothetical 425 Esplanade]. That parcel is 9,746 square feet in size, and contains an asphalt paved parking lot. The zoning on this parcel is P-2, Church Use, and the Future Land Use Map category is Religious Institution, and will remain as such."

In 2020, the Church sold the parking lot Property to R & J Portfolio LLC, but the plat, zoning, and FLUM designations were not amended at that time. The applicant now wishes to replat, rezone, and redesignate the Property on the FLUM with the ultimate goal of building a single-family home.

## Recommendations

Staff has reviewed the FLUM amendment for conformance and finds it complies with the Comprehensive Plan and City Code. If redesignated to Single Family Residential, the permitted use would be less intensive than those which would be allowed under Religious Institutional (houses of worship and related schools, public parks and public utilities). Staff therefore, recommends **approval** of the FLUM amendment from Religious Institution to Single Family Residential since (i) it is consistent with the goals, objectives, and policies of the City's Comprehensive Plan; (ii) it is compatible with the character and purpose of the surrounding Future Land Use designations and uses; (iii) the Property is suitable for the permitted uses in the proposed Future Land Use designation; (iv) the proposed use will not adversely affect the development of the general neighborhood or district; (v) will not generate unfavorable vehicular traffic, circulation problems, or parking demands; (vi) will not create unfavorable environmental impacts or dangerous hazards; and (vii) will not be contrary to the public health, safety, and welfare of the City and its residents.

## Attachments

Additionally, the following documents are attached to this report as reference to the Application.

1. Letter of Intent
2. Hearing Application
3. Notice of Public Hearing
4. Proof of Notice – 500-foot radius



5. Proof of Notice - Electors
6. Property Appraiser – Folio
7. Deed – Parcel 1 of Tract A
8. DRAFT Ordinance



**DRAFT**  
**ORDINANCE NO. XXXX- 2023**

**AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING A SMALL-SCALE AMENDMENT TO THE CITY'S COMPREHENSIVE PLAN, CHANGING THE FUTURE LAND USE MAP DESIGNATION FROM "RELIGIOUS INSTITUTION" TO "SINGLE FAMILY RESIDENTIAL" OF A CERTAIN ±0.22 ACRE PARCEL OF LAND LOCATED AT THE INTERSECTION OF ESPLANADE DRIVE AND HIBISCUS DRIVE AT HYPOTHETICAL 425 ESPLANADE DRIVE (FOLIO NO. 05-3119-020-0015); PROVIDING FOR AUTHORIZATION; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the "City" or "Applicant"), pursuant to the requirements set forth in Chapter 163, Florida Statutes, is requesting a Small Scale Development Amendment to the City's Comprehensive Plan to modify the Future Land Use Map (FLUM) from "Religious Institution" to "Single Family [Residential]" for a ± 0.22 acre parcel of property generally located at the intersection of Esplanade Drive and Hibiscus Drive at hypothetical at 425 S. Esplanade Drive (the "Property"), as legally described in **Exhibit "A"** attached hereto (the "FLUM Amendment"); and

**WHEREAS**, after careful review and deliberation, City Staff has determined that the FLUM Amendment is in compliance with the City's Comprehensive Plan and consistent with Section 163.3184, Florida Statutes, as set forth in the City Staff's Report and Recommendations, which is attached hereto and incorporated herein as **Exhibit "B"** and which contains data and analysis supporting the FLUM Amendment; and

**WHEREAS**, on October 2, 2023, the City's Zoning and Planning Board held a duly advertised public hearing to make a recommendation of [approval/denial] to the City Council; and

**WHEREAS**, the City Council has been designated as the Local Planning Agency ("LPA") for the City pursuant to Section 163.3174, Florida Statutes; and

**WHEREAS**, pursuant to Section 163.3174(4), Florida Statutes, the City Council, sitting as the LPA, held a duly advertised public hearing on October 9, 2023 and recommended [approval/denial] of the FLUM Amendment; and

**WHEREAS**, on October 9, 2023, during the City Council Meeting, the City Council conducted a duly advertised public hearing for first reading of the Ordinance, considered all comments received concerning the FLUM Amendment as required by State laws and local ordinances; and

**WHEREAS**, on \_\_\_\_\_, 2023, during the City Council Meeting, the City Council conducted a duly advertised public hearing for second reading (adoption) of the Ordinance, considered all comments received concerning the FLUM Amendment as required by State laws and local ordinances and recommended [approval/denial] of the FLUM Amendment; and

**WHEREAS**, after reviewing the Local Planning Agency's recommendation, the recommendation of City Staff, and comments from the public, the City Council finds, based upon competent substantial evidence, that the proposed FLUM Amendment to the City's Comprehensive Plan for the Property is in compliance with and consistent with Florida law and the City's Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, THAT:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Approval of Small-Scale Future Land Use Map Amendment.** Pursuant to Section 163.3187, Florida Statutes, the City Council hereby approves amending the City's Comprehensive Plan Future Land Use Map from "Religious Institution" to "Single Family [Residential]" for the ±0.22-acre parcel located at 425 Esplanade Drive, Miami Springs, Florida, legally described in Exhibit "A" attached hereto and incorporated herein.

**Section 3. Authorization.** The City Manager, by and through the Director of Zoning and Planning, is authorized to make the necessary changes to the City's Comprehensive Plan Future Land Use Map to reflect the FLUM Amendment approved in Section 2, above.

**Section 4. Transmittal.** The City Manager and/or his/her designee are authorized to transmit this Ordinance approving the FLUM Amendment to the Florida Department of Commerce and other State agencies pursuant to the requirements of Section 163.3184, Florida Statutes, as may be applicable, and take all action necessary to finalize and approve same.

**Section 5. Effective Date.** That this Ordinance shall be effective immediately upon adoption by the City Council on second reading, except, pursuant to Section 163.3187(5)(c), Florida Statutes, the FLUM Amendment adopted by this Ordinance shall not become effective until 31 days after adoption. If timely challenged, the FLUM Amendment adopted by this Ordinance may not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted small scale development amendment is in compliance with Section 163.3184, Florida Statutes.

**PASSED ON FIRST READING** on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, on a

motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2023,  
on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_. Upon being put to a  
roll call vote, the vote was as follows:

Vice Mayor Jorge Santin	_____
Councilwoman Jacky Bravo	_____
Councilman Dr. Walter Fajet, Ph.D.	_____
Councilman Dr. Victor Vazquez, Ph.D.	_____
Mayor Maria Puente Mitchell	_____

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Tract "A" of "MIAMI Springs Baptist Church", a subdivision according to the Plat thereof, as recorded in Plat Book 76, Page 71, of the Public Records of Miami-Dade County, Florida; Less and Except the Southwesterly 91.00 feet of said Tract "A" as conveyed in Warranty Deed recorded in Official records Book 32884, Page 3726.



# City of Miami Springs

201 Westward Drive Miami Springs, FL 33166  
Phone: (305) 805-5034 Fax: (305) 805-5036 Website: www.miamisprings-fl.gov

## CITY OF MIAMI SPRINGS PLANNING DEPARTMENT

### STAFF REPORT

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<b>TO</b>	Zoning and Planning Board
<b>FROM</b>	Alex David, Director of Miami-Dade Office Calvin, Giordano & Associates, Inc. Planning Consultant
<b>CC:</b>	Silvia Vargas; Antonio Augello Calvin, Giordano & Associates, Inc.
<b>DATE</b>	October 2, 2023
<b>SUBJECT</b>	Rezone – 425 Esplanade Drive

---

<b>Case No.</b>	01-ZP-21 (Rezone)
<b>Applicant(s)</b>	R & J Portfolio LLC (“Applicant”)
<b>Address</b>	Hypothetical 425 Esplanade Drive (“Property”)
<b>Folio Number(s)</b>	05-3119-020-0015
<b>Current Future Land Use</b>	Religious Institutional
<b>Current Zoning District</b>	P-2

### Property

The Property consists of an asphalt paved parking lot located at the SE corner of S. Esplanade Drive and Hibiscus Drive. The parcel is roughly square in shape and 9,746 square feet in size. The full legal description is the following:

*Tract “A” of “MIAMI Springs Baptist Church”, a subdivision according to the Plat thereof, as recorded in Plat Book 76, Page 71, of the Public Records of Miami-Dade County, Florida; Less and Except the Southwesterly 91.00 feet of said Tract “A” as conveyed in Warranty Deed recorded in Official records Book 32884, Page 3726.*



## Proposal

The Applicant is proposing a rezoning from P-2 (“Church Use”) to R-1B (“Single Family Residential”). The Applicant is also requesting a Future Land Use Map amendment – from Religious Institutional to Single Family Residential – and a Replat to ultimately permit the construction of a single-family dwelling unit.

The current zoning district allows the following:

### Sec. 150-091. - P-2 church use only.

- (A) *Uses permitted.* Any building used for church services, Sunday school instruction, or other activities directly connected with the normal operation of a church.
- (B) *Building height limits.* The maximum building height shall be 40 feet.
- (C) *Site.* The minimum building site shall be governed by the number of off-street parking spaces which the site will accommodate, in proportion to the size of the building, as provided by this chapter, and subject to the limitations as herein provided for front, rear, and side yard requirements.
- (D) *Front, side, and rear yard requirements.* No structure in this area shall be built closer than 30 feet to the exterior property lines of the minimum building site as herein required.
- (E) *Signs.* See Signs, [§ 150-030](#).





(F) *Parking standards and requirements.* See [§ 150-016](#).

The proposed zoning district would allow the following:

**Sec. 150-042. R-1B district.**

(A) Uses permitted.

(1) Single-family dwelling. In no case shall there be more than one main building on a lot.

(2) Accessory structures and uses incidental to the single-family dwelling when placed on the same lot or parcel of land and not used or operated commercially, including, private garages, children(s) playhouses, tool sheds, and workshops. Accessory structures and uses such as servant(s) quarters, guest houses, and any other type of dwelling or dwelling unit are prohibited. Accessory structures shall occupy not more than 15 percent of the area of the rear yard. Notwithstanding any other definition or provision contained within the Code of Ordinances to the contrary, the "total rear yard area" for the purposes of the calculations required for the determination of the percentage of rear yard occupancy shall include all areas of property on the site from the vertical walls of structure backward to the rear property line, regardless of whether any such wall is recessed behind the part of the structure from which the required rear yard setback is measured. Accessory structures and all constructed additions shall conform in design and character to that of the main building and be constructed in accordance with all other applicable provisions of City Ordinances. All additions constructed onto existing single-family residences shall conform to the minimum habitable space provisions set forth in the South Florida Building Code. The placement and location of all such accessory structures in rear yards of properties shall provide a separation of at least ten feet from the main building, from other accessory structures and from utility sheds, and shall not be located closer to the side yard boundary line than the required side yard setback for the main building, nor closer than five feet to the rear yard boundary line of the property. Each single-family residential homesite may contain a maximum of two accessory structures, so long as such structures comply with the foregoing construction and location limitations and restrictions. Single-family residential homesites that already maintain a utility shed thereon may only contain one accessory structure which meets the construction and location limitations and restrictions previously set forth herein.

(a) Minimum rear yard setback: Five feet.

(b) Minimum side yard setback: 10% of lot width. No less than five feet for interior lot lines and no less than 15 feet for corner lot lines.

(c) Minimum distance separation from main residence: 10 feet.

(d) Maximum number of accessory structures: Two.

(e) Maximum rear yard lot coverage: 15%.

(3) Signs. See Signs, § 150-030.

(B) Building height limit. The maximum building height of main buildings shall be two stories which shall not exceed 30 feet. For accessory structures, the roof tie beam shall not exceed ten feet in height, and the roof height shall not exceed 15 feet. Notwithstanding the foregoing, the Board of Adjustment and City Council can approve additional heights for structures when the additional heights are for architectural design features which do not constitute living space and which are not inconsistent with the character of the surrounding neighborhood. Any application for approval pursuant to this provision shall

not be considered a variance, but an exceptional approval by the Board and City Council.

(C) Building site area required. The minimum building site area shall be one lot or parcel of land 10,000 square feet in area for each single-family dwelling. The parcel shall have a minimum average width of at least 75 feet. (For exemptions for undersized legal non-conforming lots see § 150-092(C)).

(D) Front yard required. There shall be a front yard of a depth of not less than 30 feet, unless the average depth of the front yard of the contiguous lot or lots is either greater or less than 30 feet, in which case the front yard shall be the average depth of the front yard of the contiguous lot or lots. In case there is no dwelling on the block, the depth of the front yard shall be a minimum of 30 feet. The maximum depth of the front yard permitted shall be not more than 50 percent of the depth of the lot or building site.

(E) Side yard requirements.

(1) Side yards required for one-story buildings. The width of the required side yards for one-story buildings shall each be ten percent of the average width of the lot, but in no case shall each side yard be less than five feet in width. Side yards adjacent to streets shall be not less than 15 feet. Side yards shall be measured from the closest point of the structure to the side lot line, on a bearing parallel to the front lot line, at ground level.

(2) Continuation of a legal non-conforming setback.

(a) A legal non-conforming setback may be continued horizontally as long as the provided setback is no less than 50% of the required setback.

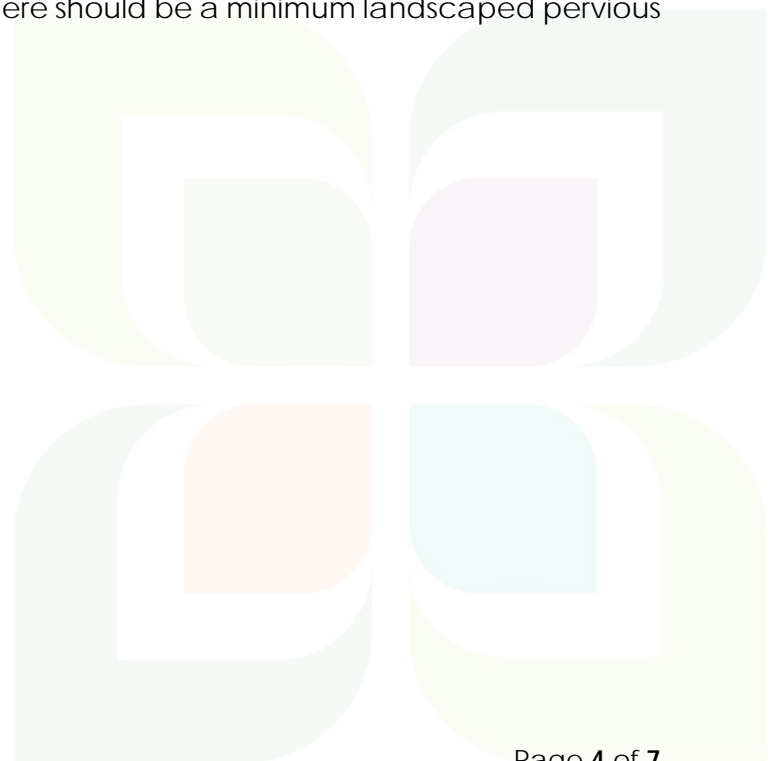
(b) A legal non-conforming setback may be continued vertically as long as the provided setback is no less than 50% of the required setback.

(F) Rear yard required. There shall be a rear yard not less than 25 feet in depth.

(G) Floor area requirements. The minimum floor areas of dwellings in this district shall be 1,500 square feet.

(H) Maximum lot coverage. There should be a maximum lot coverage of 40%.

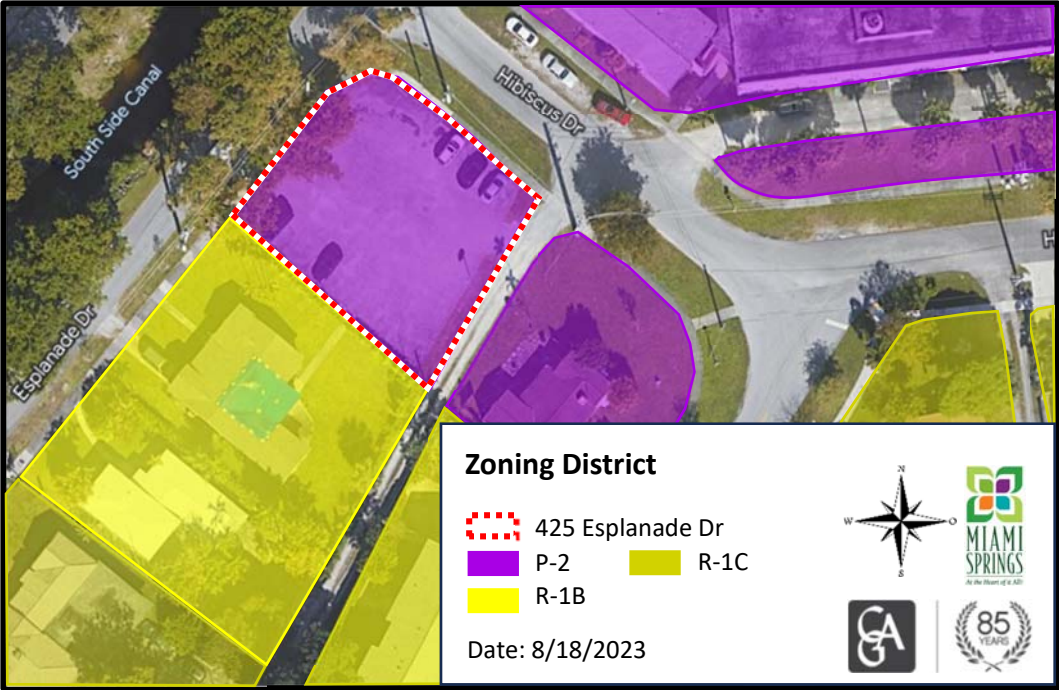
(I) Minimum landscaped pervious area. There should be a minimum landscaped pervious area of 30%.



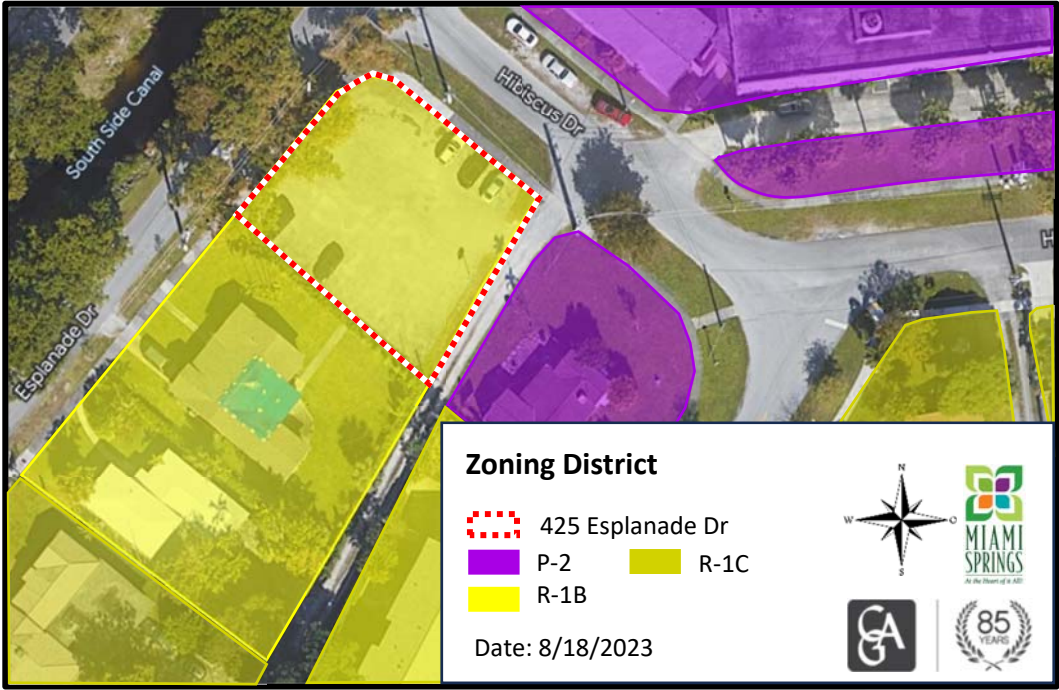


### Zoning Map

From:



To:



## Process/Notices

Pursuant to *Sec. 150-104. – Petition for zoning change*, any change or modification in the classification or regulation would require a public hearing with the Zoning and Planning Board with a written consent or the objection of not less than 20 percent of the property owners, exclusive of the petitioner, within a 500-foot radius in all directions from all property lines. Although the Code requires written consent or objection, the Code provision is inconsistent with case law which does not permit the rezoning to be reliant upon consent or objection of neighbors. Accordingly, notice of the application will be sent, but consent/objection of neighbors will not be obtained. Additionally, mailed notice shall be sent to electors of City based on the most current voter registration list, pursuant to *Sec. 1.04(3)(c)* of City Charter.

Posted notice at Public Buildings shall be available for two (2) weeks prior to date of first newspaper publication at City Hall, Recreation Center Gymnasium, The Field House, and any other building designated by Council, pursuant to *Sec. 1.04(3)(c)* of City Charter.

Advertised notice shall be available ten (10) days prior to the Local Planning Agency (LPA) and Ordinance 1<sup>st</sup> Reading in *Daily Business Review*, and a courtesy notice in *the Gazette*. Ten (10) days prior to the 2<sup>nd</sup> Reading, advertised notice in *Daily Business Review*, and a courtesy notice in *the Gazette*, shall also be required.

The review process would require the Applicant to prove the proposed use is consistent with the goals, objectives, and policies of the City, compatible with the character and purpose of the surrounding zoning designations, and would not create unfavorable conditions that could affect the public health, safety, and welfare of the City and its residents.

## History

In 1962, the Property was incorporated into Tract "A" of "Miami Springs Baptist Church" and used as a parking lot. In 2018 and 2020, Tract "A" was conveyed by two deeds, resulting in the division of Tract A into two parcels: Parcel 1, 9,746 square feet in size with the asphalt parking lot (the Property), and Parcel 2, 10,685 square feet in size, with a single-family residence. The existing house on Parcel 2 was originally used as a residence for the Church's Pastor, and was sold by the Church in 2018 to Christopher Anderson and Rosario Molina, keeping the same use. By subdividing Tract A via deeds and without going through the proper subdivision requirements, an illegal subdivision was created, which prevents both properties from obtaining building permits.

In 2018, Parcel 2 located at 427 Esplanade Drive was re-designated from Religious Institution to Single Family Residential on the City's FLUM and rezoned from P-2, Church Use to R-1B by Ordinances 1103-2018 and 1104-2018, respectively. At the time, the City was the applicant on behalf of the Miami Springs Baptist Church. When the 2018 ordinances were adopted, the staff report supporting the ordinances explained that "The



Church also owns [hypothetical 425 Esplanade]. That parcel is 9,746 square feet in size, and contains an asphalt paved parking lot. The zoning on this parcel is P-2, Church Use, and the Future Land Use Map category is Religious Institution, and will remain as such.”

In 2020, the Church sold the parking lot Property to R & J Portfolio LLC, but the plat, zoning, and FLUM designations were not amended at that time. The applicant now wishes to replat, rezone, and redesignate the Property on the FLUM with the ultimate goal of building a single-family home.

### Recommendations

Staff has reviewed the Rezoning for conformance and finds it complies with the City Code. If rezoned to R-1B the permitted single-family use would be less intensive than those which would be allowed under P-2 (Church Use). Staff therefore recommends **approval** of the rezoning application since (i) it is consistent with the goals, objectives, and policies of the City’s Comprehensive Plan; (ii) it is compatible with the character and purpose of the surrounding zoning designations and existing uses; (iii) the Property is suitable for the permitted uses in the proposed zoning district; (iv) the proposed use will not adversely affect the development of the general neighborhood or district; (v) will not generate unfavorable vehicular traffic, circulation problems, or parking demands; (vi) will not create unfavorable environmental impacts or dangerous hazards; and (vii) will not be contrary to the public health, safety, and welfare of the City and its residents.

### Attachments

Additionally, the following documents are attached to this report as reference to the Application.

1. Letter of Intent
2. Hearing Application
3. Notice of Public Hearing
4. Proof of Notice – 500-foot radius
5. Proof of Notice - Electors
6. Property Appraiser – Folio
7. Deed – Parcel 1 of Tract A
8. DRAFT Ordinance

**ORDINANCE NO. XXXX-2023**

**AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING A REZONING FROM P-2 CHURCH USE TO R-1B SINGLE FAMILY RESIDENTIAL OF A CERTAIN ±0.22 ACRE PARCEL OF LAND LOCATED AT THE INTERSECTION OF ESPLANADE DRIVE AND HIBISCUS DRIVE AT HYPOTHETICAL 425 ESPLANADE DRIVE (FOLIO NO. 05-3119-020-0015); PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, R & J Portfolio LLC (the "Applicant") is requesting a rezoning from P-2 Church Use to R-1B Single Family Residential for a ± 0.22-acre parcel of the property generally located at the intersection of Esplanade Drive and Hibiscus Drive at hypothetical 425 S. Esplanade Drive (the "Property"), as legally described in **Exhibit "A"** attached hereto (the "Legal Description"); and

**WHEREAS**, after careful review and deliberation, City Staff has determined that the proposed rezoning is in compliance with the City's Comprehensive Plan and Land Development Code, as set forth in the City Staff's Report and Recommendations, which is attached hereto and incorporated herein as **Exhibit "B"** (the "Staff Report"); and

**WHEREAS**, on October 2, 2023, the City's Zoning and Planning Board held a duly advertised public hearing to make a recommendation of [approval/denial] to the City Council; and

**WHEREAS**, the City Council has been designated as the Local Planning Agency ("LPA") for the City pursuant to Section 163.3174, Florida Statutes; and

**WHEREAS**, pursuant to Section 163.3174(4), Florida Statutes, the City Council, sitting as the LPA, held a duly advertised public hearing on October 9, 2023, and recommended [approval/denial] of the rezoning; and

**WHEREAS**, on October 9, 2023, during the City Council Meeting, the City Council conducted a duly advertised public hearing for first reading of the Ordinance, considered all comments received concerning the rezoning as required by State laws and local ordinances; and

**WHEREAS**, on \_\_\_\_\_, 2023, during the City Council Meeting, the City Council conducted a duly advertised public hearing for second reading (adoption) of the Ordinance, considered all comments received concerning the rezoning as required by State laws and local ordinances and recommended [approval/denial] of the rezoning; and

**WHEREAS**, after reviewing the Local Planning Agency's recommendation, the recommendation of City Staff, and comments from the public, the City Council finds,

based upon competent substantial evidence, that the proposed rezoning of the Property on the City's Zoning Map is in compliance with and consistent with Florida law, the City's Comprehensive Plan, and the City's Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, THAT:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Approval of Rezoning.** That the City Council hereby approves rezoning of the Property P-2 Church Use to R-1B Single Family Residential.

**Section 3. Authorization.** That the City Manager, by and through the Director of Zoning and Planning, is authorized to make the necessary changes to the City's Zoning Map to reflect the rezoning approved in Section 2, above.

**Section 4. Recording.** The City, or the Applicant if so requested by the City Clerk, shall record this Ordinance at the Applicant's sole expense in the Public Records of Miami-Dade County, Florida.

**Section 5. Effective Date.** That this Ordinance shall take effect immediately upon adoption. However, the effective date of the rezoning adopted by this Ordinance shall be the effective date of the concurrent small-scale Comprehensive Plan amendment.

**PASSED ON FIRST READING** on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2023, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_. Upon being put to a roll call vote, the vote was as follows:

Vice Mayor Jorge Santin	_____
Councilwoman Jacky Bravo	_____
Councilman Dr. Walter Fajet, Ph.D.	_____
Councilman Dr. Victor Vazquez, Ph.D.	_____
Mayor Maria Puente Mitchell	_____

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

---

ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

---

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY



**EXHIBIT A**

**LEGAL DESCRIPTION**

Tract "A" of "MIAMI Springs Baptist Church", a subdivision according to the Plat thereof, as recorded in Plat Book 76, Page 71, of the Public Records of Miami-Dade County, Florida; Less and Except the Southwesterly 91.00 feet of said Tract "A" as conveyed in Warranty Deed recorded in Official records Book 32884, Page 3726.



## MEMORANDUM

To: Honorable Mayor and Council

From: Haydee Sera, Esq., Weiss Serota Helfman Cole & Bierman, P.L., City Attorney

Date: October 23, 2023

RE: 2<sup>nd</sup> Reading: Ordinance Amending Section 150-070.1, "Miami Springs Gateway Overlay District," of the City Code of Ordinances (the "Code")

### **I. Procedural History**

On September 25, 2023, the City Council, sitting as the Local Planning Agency ("LPA"), recommended approval of an Ordinance amending Section 150-070.1 of the Code relating to permitted uses along road rights-of-way on first floor levels within the Miami Springs Gateway Overlay District (the "Overlay District"), subject to incorporation of certain amendments that are described in further detail below. At the Regular City Council meeting immediately after the LPA meeting, the City Council approved the proposed Ordinance amending the Overlay District at First Reading together with the LPA's recommendations. On October 9, 2023, after discussion, the City Council deferred the Ordinance at Second Reading and requested discussion of the Ordinance at a City Council workshop.

A City Council workshop has been scheduled for 5:00 p.m. on Monday, October 23, 2023, immediately prior to the regular Council meeting that begins at 7:00 p.m.

### **II. Proposed Ordinance.**

This memorandum supplements the memorandum that was provided on September 25, 2023. Based on the discussion at the October 9, 2023, City Council meeting, the City Attorney, together with input from the City Planners and Staff, has prepared an alternate version of the Ordinance for Council's consideration on October 23, 2023.

The agenda packet for the October 23, 2023 Council meeting includes:

1. The Ordinance as presented on October 9, 2023 (the "Ordinance");
2. Alternative Ordinance, which includes recommended revisions to the Ordinance presented on October 9, 2023 (the "Alternative Ordinance"); and
3. A "clean" version of the Alternative Ordinance (labeled as "Alternative (Clean)", which is what the Ordinance would ultimately look like if the Alternative Ordinance were adopted by Council as presented.

### **Ordinance Presented on October 9, 2023**

The Ordinance presented on October 9, 2023 incorporated the initial changes recommended by the City Council at the LPA on September 25, 2023. The changes between the September 25 hearing and the October 9, 2023 hearing are summarized as follows:

1. Recitals were clarified to provide that the primary reason behind the proposed text changes is to provide additional flexibility for businesses seeking to operate within the District, and that by providing increased flexibility, the City will promote a lively business atmosphere, ensure the success of the District, and encourage vibrant pedestrian activity and walkability.
-

2. A definition to proposed Section 150-070.1(3)(c) of the Code was added to clarify what a Medical or Dental Office Use encompasses. Specifically, a Medical or Dental Office Use is defined as a small-scale office with a maximum floor area of 2,000 square feet that provides medical or dental treatment. The term does not include medical or clinical laboratories, urgent care centers, hospitals, emergency rooms, or other similar medium to large-scale medical office uses, which are specifically prohibited.
3. Section 150-070.1(3)(e) of the Code was amended to increase the distancing requirements between veterinarian uses within the District from 0.25 airline miles to 0.30 airline miles.
4. A scrivener's error was addressed at line 90 of the Revised Ordinance.

### **Alternative Ordinance for Second Reading on October 23, 2023**

After considering the City Council's discussion and concerns from the October 9, 2023 Council Meeting, the City Attorney, with input from the City Planners and Staff, prepared an Alternative Ordinance for Second Reading. The primary differences between the Alternative Ordinance and the Ordinance presented on October 9 are as follows:

1. The Alternative Ordinance no longer limits the permissible locations for Medical or Dental Office, Personal Services, or Veterinarian first floor uses to particular street frontages within the District.
2. In keeping with the intent to create a more walkable and lively District, the Alternative Ordinance amends proposed Section 150-070.1(3)(c) of the Code to allow Medical or Dental Office Uses only. General office uses (e.g., offices for accountants, attorneys, architects, engineers, insurance agencies, etc.) would not be permitted as *first* floor uses. However, general office uses would continue to be permitted above the first floor.
3. The Alternative Ordinance amends proposed Section 150-070.1(3)(d) of the Code to make the description of Personal Services consistent with the description provided in the Central Business District, which is: "Personal Services (e.g., barbershops, beauty parlors, physical therapy clinics), with hours of business between 6:00 a.m. and 10:00 p.m." The parenthetical in this category of uses provides examples of uses that may be permitted as Personal Services, but is not intended to be an exhaustive list of Personal Services.

It is recommended that Council consider the Alternative version of the ordinance and make a motion to adopt the ordinance as presented in Alternative. If Alternative is passed on second reading, the Alternative Ordinance will become effective immediately.

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1 **Sec. 150-070.1. Miami Springs Gateway Overlay District.**

2 (A) *Purpose.* The purpose of the Miami Springs Gateway Overlay District ("Gateway District"), located within the  
3 Central Business District for the area abutting and/or adjacent to the outgoing/incoming vehicular bridges  
4 to/from the City of Hialeah, as identified in the City's Future Land Use Map and herein, is to facilitate  
5 placemaking by enhancing neighborhood character and authenticity through participatory design and  
6 identifying projects such as architecturally significant buildings, entrance features, art in public places,  
7 improved landscaping and signage, traffic calming features, and promotion of the City's history. The  
8 foregoing will further the goals, objectives, and policies of the Central Business District, which are to foster a  
9 suburban downtown that satisfy the business, service, dining, and entertainment needs of the community's  
10 residents, as further detailed in the City's Comprehensive Plan and § 150.070 of the City Code.

11 (B) *Boundary.* As identified in the City's Future Land Use Map, the Gateway District shall be defined as that area  
12 bounded by Canal Street, the alley southeast of Hook Square, South Royal Poinciana Boulevard, North Royal  
13 Poinciana Boulevard and Nahkoda Drive. More specifically this area includes: Lots 24—26 Block 86; Tract A,  
14 Block 85; Tract B, Block 85; Tract C, Block 85; Lot 9, Block 85; Lots 1—2, Block 66; Lot 6, Block 66; Lot 7, Block  
15 66; Lot 8, Block 66 and Track G; Lots 10, 12-14 And Tracks E and F; Lot 16, Block 66; Track D, Block 66; Lots  
16 21—22, Block 66; Lots 31—34, Block 66; Lots 28—30, Block 66; Lot 27, Block 66; Tract C, Block 66; and Lots  
17 21—22, Block 66. For reference, the area is identified below.



18  
19 (C) *Design Standards.* The City desires for new and existing buildings within the Gateway District to become  
20 more aesthetically pleasing, have architectural elements that highlight the City's history, facilitate pedestrian  
21 activity and walkability, and assist in traffic calming. As opposed to a mandate, the City desires to accomplish  
22 these objectives through incentives in development standards that will encourage property owners to  
23 improve their respective properties in a manner that results in cohesive building design and features  
24 throughout the Gateway District. The standards are as follows:

- 25 1. *Building height limitations.* In keeping with the applicable requirement of the CBD, the maximum  
26 building height shall be no more than 40 feet and no more than three stories. Rooftops may be  
27 activated provided that no vertical construction exceeds the height restrictions stated herein.
- 28 2. *Setbacks.* The setbacks in the CBD shall remain in effect for the Gateway District, except as follows:
- 29 a. All buildings shall be built to the front property line, but the first floor shall be recessed ten feet,  
30 so as to facilitate expanded sidewalks or arcade for increased pedestrian activity; and
- 31 b. No rear yard setback is required.
- 32 3. *Uses.* The uses in the CBD shall remain in effect for the Gateway District, except that hotels shall be  
33 prohibited in the Gateway District. Additionally, first floor uses along road rights-of-way shall be limited  
34 to restaurant and/or retail. The ground floor shall contain occupiable, air-conditioned space for  
35 permitted commercial uses with a minimum depth of 40 feet from the building façade for those

36 portions of the building along road rights-of-way, except such features as, without limitation,  
 37 driveways, utility infrastructure, colonnades and outside dining areas. Direct access to such uses and  
 38 full storefront windows are encouraged. Upper floors may be commercial, office, residential, or a mix  
 39 of residential, office, and commercial. The mixed-use ratio found in § 150.070 of the Code shall not  
 40 apply to the Gateway District.

41 4. *Architectural design.* It is required that all new site development, structures, buildings, remodelings  
 42 and renovations show proper architectural design concepts and be appropriate to their surroundings.  
 43 All new construction and remodeling and renovation of existing buildings and structures within the  
 44 Gateway District shall:

45 a. Exhibit elements of the Pueblo/Mission Revival architectural design standard. Examples of these  
 46 styles will be available through the Office of the City Planner;

47 b. Be designed in such a manner as to create, improve, or connect pedestrian amenities in the  
 48 subject property and surrounding area, giving specific consideration to such things as, without  
 49 limitation, linkages in/between/among circulation patterns, relationships to architectural and  
 50 urban design features, relationships to public and private spaces, and accessibility, usability and  
 51 coordination with adjacent properties;

52 c. To the extent possible, install awnings or eyebrows for portions of the project that abut City  
 53 sidewalks;

54 d. Be installed underground all on-site utilities. Large transformers shall be placed on the ground  
 55 within pad amounts, enclosures or vaults;

56 e. Provide adequate landscaping to screen all aboveground facilities.

57 f. All satellite dishes, antennas, and or other telecommunications equipment must be appropriately  
 58 screened such that it is not visible from the street.

59 g. Limit any residential elements to upper floors. Residential dwelling units in the upper floors shall  
 60 be have an average square foot requirement of no less than 900 square feet, with an individual  
 61 unit minimum requirement of no less than 800 square feet. Efficiencies, studio, and loft  
 62 apartments are prohibited.

63 5. *Floor Area Limitations.* All buildings within the Gateway District shall be limited to a floor area ratio  
 64 (F.A.R.) of 1.0, in keeping with the limitation of the CBD, except that properties may be  
 65 developed/redeveloped up to an F.A.R. of 1.7 through the satisfaction of the creative excellence  
 66 standards established in this section.

67 6. *Creative Excellence Standards.* For a property to take advantage of a project F.A.R. in excess of 1.0 as  
 68 referenced in subsection 5 herein, a development or redevelopment project must incorporate a  
 69 combination of elements from at least three of the Creative Excellence categories provided below,  
 70 which shall be demonstrated by the property owner at the time of initial site plan review and  
 71 considered by the City Council at the hearing for site plan approval. Notwithstanding the cumulative  
 72 value of the Creative Excellence elements, no project may exceed an F.A.R. of 1.7. No single element  
 73 may be counted towards the satisfaction of more than one standard. The schedule of Creative  
 74 Excellence elements for projects in the Gateway District are as follows:

Category	Creative Excellence Element	Amount of F.A.R. (up to specified amount depending on

		degree of compliance)
A. Site Planning and Design	<p>a. Art in public places—Durable creations that can be original works of art designed specifically for the site including, but not be limited to, sculptures, monuments, fountains, stained glass, or ceramics and may include architectural designs, components or structures. The "art work" medium can include, but not be limited to, glass, steel, bronze, wood, stone and concrete. For purposes of the art program, "art work" does not include the following: (1) directional elements, such as signage or graphics; (2) objects that are mass-produced in a standard design; or (3) landscape gardening, unless substantially comprising durable elements defined as "art work" under this section. The art shall be placed in an exterior area on the property subject to the development or on public property within the Gateway District, which is easily accessible or clearly visible to the general public from adjacent public property such as a street or other public thoroughfare or sidewalk. At a minimum, the art work shall cost one percent of total construction cost as indicated on the Building Permit or \$25,000.00 whichever is greater. An independent appraisal or other evidence of the value of the proposed art, including acquisition and installation costs, shall be submitted at the time of initial site plan review. The design and placement of the art is subject to approval by the City during site plan review. This element may be satisfied with a decorative water features— Considering movement, sound, reflection, recreation, cooling effect, architectural effect, coordination with plaza or other special place, public-private transition, visual impact, and relation to overall project design. In the alternative, a property may elect to pay the City an amount equal to the value of the art that meets this element in lieu of art on the property, which the City shall use for public art and beautification improvements.</p>	0.2
	<p>b. Community Entry Feature—A thematic architectural or landscape design elements that</p>	0.20

	incorporates a special landmark feature or public art to identify the community, representative of the City character. The Feature shall be subject to approval by the City.	
	c. Directional Signage—A thematic, permanent sign incorporated into a right-of-way feature that orients pedestrians and drivers to facilities and other points of interest. The design of the signage will be subject to approval by the City.	0.20
B. Improvements: Rights-of-Way and On-Site Public Spaces	a. Alley improvements—Resurfacing and lighting in accordance with the specifications as established by the City Engineer. Includes the placement of all utility lines, transformers and related equipment underground and/or in vaults.	0.2
	b. Right-of-Way improvements—Improvements to crosswalks, sidewalks, canal banks, curbing, landscaping islands and other.	0.2
	c. Installation of trolley stops/bus shelter on the subject property or neighboring property.	0.15
C. Site Improvements	a. Lighting—Installation of decorative lighting (any combination building, landscape and site lighting).	0.1
	b. Landscape maturity—This bonus applies to landscaping that is a minimum 50% bigger than minimum standards for onsite plantings.	0.2
	c. Street trees, grates and irrigation—Landscaping on the public right-of-way shall occur for the entire street frontage of the property and shade trees shall be planted no further apart than 30 feet on center. Palms shall not be counted towards this elements. This bonus applies to landscaping that is a minimum 50% bigger than minimum standards for onsite plantings.	0.1
D. Green Buildings	Green Building Certification. LEED (New Construction or Major Renovation) Silver or greater, or certification by the Florida Green Building Council	0.5
	(a) The applicant must successfully register the project with the Green Building Certification Institute or the Florida Green Building Coalition, or other third party certifying agency as approved by the City Planner, and provide evidence of such registration	

	<p>(b) Applicant shall have a minimum of one LEED accredited professional, or other similarly accredited professional, on the design team. Applicant shall provide a copy of the LEED accreditation certificate or similar certification and describe the role of the LEED accredited professional on the design team</p>	
	<p>(c) The applicant must provide a copy of the pertinent credit checklist indicating which credits the applicant intends to achieve along with a written narrative and detailed drawings and plans illustrating the applicant's intent to meet the prerequisites as described in the applicable LEED Rating System or FGBC Designation for the specific building type</p>	
	<p>(d) Prior to the issuance of the first principal building permit the applicant shall post a performance bond equal to five percent of the total cost of the construction in order to secure performance and fulfillment of the applicant. In lieu of the bond required by this Section, the City may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the City. The letter of credit or escrow shall be in the same amount of the bond if it were posted. If the project fails to meet the criteria required for certification by the Green Building Certification Institute or other nationally recognized certifying agency within one year after receiving the City's certificate of occupancy, the applicant shall either request an extension or forfeit 100 percent of the bond. The applicant, for good cause shown, may request an extension of time of up to one additional year to achieve certification. Such extension may be granted at the sole discretion of the City Council after having considered the factors and improvements necessary to achieve the requisite certification. If certification is not achieved within two years after receiving the City's certificate of occupancy, the applicant shall forfeit 100 percent of the bond to the City</p>	



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76 (D) *Parking Requirements.* The CBD parking requirements as provided in § 150.070(E)(1—3) shall apply to the  
77 Gateway District, including, without limitation, the grandfathering of provided parking, if any, for existing  
78 buildings and current uses. Additionally, because of the uniqueness of the buildings, configuration of parcels,  
79 and road network in the Gateway District, the minimum parking space requirements and design for new  
80 construction or alterations to existing structures that expand occupiable space, shall be determined on a  
81 case-by-case basis. The City Planner shall have the authority to establish parking requirements for alterations  
82 and new construction by counting a combination on-site and on-street parking and other elements identified  
83 below. In establishing the required parking, the City Planner shall utilize a parking study prepared by a  
84 licensed and qualified individual selected by the City, the actual cost of which shall be reimbursed by the  
85 applicant. For any on-street parking space(s) counted towards the satisfaction of a property's requirement,  
86 irrespective of whether such spaces are immediately abutting or adjacent to the subject property, or any  
87 spaces otherwise waived as a result of one of the factors listed below, a fee shall be paid to the City for each  
88 such parking space prior to the issuance of a building permit, in an amount set from time to time by  
89 approved resolution of the City Council. The funds shall be used to fund parking and wayfinding  
90 improvements in the Gateway District and the CBD. In determining the parking requirements for non-  
91 grandfathered properties, the following factors shall be considered by the City Planner and City Council and  
92 given their due weight in proportion to their overall effect on the property's parking requirement. No single  
93 factor is dispositive.

- 94 1. Availability of on-site parking;
- 95 2. Availability of on-street parking;
- 96 3. Provision of bicycle parking;
- 97 4. Distance to, or inclusion of, bus and trolley stops;
- 98 5. Internal capture of peak traffic trips as a result of mix of uses;
- 99 6. Distance to public parking; and
- 100 7. Walking accessibility of the site.

101 All on-site parking shall be appropriately landscape to provide visual relief and, to the extent possible, shade.

102 (E) *Project Review Process.* The following formal approval process for the City shall apply to all new construction  
103 and redevelopment projects within the Gateway District.

- 104 1. Optional informational and pre-application meeting with City Staff.
- 105 2. Mandatory application preliminary review meeting with City Staff.
- 106 3. Applications for variances, if any, shall be submitted to the City Board of Adjustment for review and  
107 consideration in accordance with the procedures set forth in Code §§ 150-110 through 150-113.
- 108 4. The City Zoning and Planning Board will have the responsibility to review all site and development  
109 plans and to make recommendations for modification, approval or denial to the City Council in  
110 accordance with Code §§ 150-101 and 150-102.
- 111 5. The decisions and recommendations of the City Board of Adjustment and Zoning and Planning Board  
112 will be reviewed for final approval by the City Council in accordance with the procedures set forth in  
113 Code § 150-113.
- 114 6. The City Council shall authorize the preparation and issuance of a Development Order for each project  
115 application that has completed the Development Review Process.

116 (F) *Site Plan Review.* Any development within the Gateway District shall be required to have the site and  
117 development plans approved as provided herein before a building permit is issued to insure that  
118 development is in accord with the intent of this district. Applications for site and development plan approval

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119 shall be submitted to the Planning Office according to the provisions of the Zoning Code and the additional  
120 requirements and procedures specified herein.

121 1. The application for site and development plan approval shall include but shall not be limited to:

122 a. Plans, maps, studies and data which may be necessary to determine whether the particular  
123 proposed development meets the intent of the Gateway District, and the specific requirements  
124 and standards contained in this subsection;

125 b. A survey showing property and ownership lines; existing structures, alleys, easements and utility  
126 lines;

127 c. A traffic study providing such information as, without limitation, a location map showing the  
128 project site in relation to proximate major road systems in and out the City, the anticipated peak  
129 morning and evening trips to be generated by the proposed project, the current level of service  
130 for roadways and intersections within 500 feet of the project, in and out of the City's jurisdiction,  
131 inclusive of the following roads in the City of Hialeah: Okeechobee Road, Palm Avenue, Hialeah  
132 Drive, and East 1st Avenue;

133 d. General nature of the proposed development, planned uses and activities and the name of the  
134 developer;

135 e. A site plan showing setbacks, height, floor area ratio, orientation and all existing and proposed  
136 site development as required by this ordinance. Landscaping Design may be incorporated into  
137 the site plan or submitted as a separate plan.

138 f. Dimensioned floor plan(s) and cross sections;

139 g. To the extent sought, an explanation of how the project's design and/or amenities are meeting  
140 the creative excellence standards and the proposed value attributed to each element;

141 h. Exterior colored elevations of each building facade (including, but not limited to, renderings,  
142 sketches, and/or perspectives). Elevations must be mounted on 24-inch by 36-inch boards and  
143 submitted to the City prior to public meetings;

144 i. One set of identical uncolored elevations shall be submitted in paper format. Elevations must  
145 include all items affecting the appearance of the building including, but not limited to, site  
146 amenities, street furniture, air-conditioning grilles, compressors, mechanical equipment, exterior  
147 colors and material designations, exterior lighting, landscaping, and all signs. These drawings shall  
148 be referenced to the color and/or material samples submitted with the application and on the  
149 mounted drawings. Photographs and other similar documents which provide sufficient  
150 information will suffice for small-scale projects where applicable;

151 j. Detailed drawings for all signs, (with color and text styles, referenced in the application), except  
152 those which cannot be determined because the occupancy of the space is not known, in which  
153 case, only the text shall be excluded;

154 k. A description of exterior material designations and surface treatments (with attached samples,  
155 catalog specs, or colored brochures) including roofs and ground treatments. Sample materials  
156 may be submitted as segments, catalog cuts, or photographic records attached to the  
157 application. Large, bulky materials whose size or shape will not fit easily with the application file  
158 will not be accepted;

159 l. Exterior façade color samples complying with the City of Miami Springs approved color palette  
160 shall be submitted with the application (including that of signs);

161 m. All lighting proposed (i.e. fixture types and locations, materials, lamp design, illumination colors,  
162 etc.) shall be included within a site photometric plan and fixture schedule;

- 
- 163 n. Other information as may reasonably be required by the City Staff to provide information needed  
164 to process the application;
- 165 o. One, professionally crafted, two-point perspective color rendering of the project and one  
166 rendered landscaped site plan for review by City Staff. This shall be completed prior to public  
167 meetings. Digital images of the plans and renderings must be submitted in JPG, JPEG, TIF, or TIFF  
168 formats, resample at no greater than an 11-inch by 17-inch paper size, with a resolution of 200  
169 dots per inch (dpi), for use in a Microsoft PowerPoint presentation at the City Council meeting;
- 170 p. Points of ingress and egress for vehicular and pedestrian traffic, circulation patterns within the  
171 project, including location and design of east/west roadways, where required;
- 172 q. Location, character, and scale of parking and service facilities, including area and number of  
173 parking spaces, character of structural parking, if any; location of loading areas and commercial  
174 vehicle parking.
- 175 r. Any additional materials and information as may be required by the proper agencies of the City;
- 176 s. Where a proposed development is planned to be constructed in phases, the timing of the first  
177 phase shall be indicated. The information concerning the nature of the development, uses,  
178 location and floor areas to be developed shall also be supplied. The same information shall be  
179 provided for succeeding stages. Initiation of succeeding stages shall be made dependent upon  
180 the completion of earlier stages and the supplying of any information that may be required by  
181 the proper City agencies;
- 182 t. When a proposed development contains provisions concerning the establishment and continuing  
183 operation and maintenance of improvements and facilities for common use by the occupants of  
184 the project and the general public, but which are not provided, operated, or maintained at  
185 general public expense, the owner shall give assurance in a manner approved by the City Council  
186 that such improvements and facilities will be maintained without future expense to the City, and  
187 that the development will conform to approved site and development plans; and
- 188 u. Such other requirements as may be prescribed by the Code.
- 189 2. Exemptions. The following applications for development, redevelopment, or building permit will be  
190 exempt from the application of this ordinance:
- 191 a. Any building or structure for which final site plan approval has been obtained prior to the  
192 enactment of this section;
- 193 b. A project determined by the City Planner to be of a temporary nature such that meeting the  
194 intent of the ordinance would not be practical.
- 195 c. The City Administrative Staff shall retain the authority to exempt any proposed development or  
196 redevelopment project for this district that is being proposed for any existing structure or  
197 structures from the application of any or all of the provisions of Code. This exemption shall not  
198 be applicable to development or redevelopment projects in the Gateway District proposed for  
199 vacant or "ground up" construction which retains the continuing availability of the City variance  
200 process for specific relief from the provision of this code section.
- 201 3. Fees. Each application filed with the City shall be accompanied by the payment of a fee, as set by the  
202 City Council, from time to time, to cover the expenses of the City, including but not limited to the  
203 various costs incurred by the use of the City's outside technical and legal consultants, in processing and  
204 reviewing the application for development. Applicants shall reimburse the City for the actual costs of  
205 outside technical and legal consultants that may be incurred in excess of the application fee amount.

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206 ( Ord. 1107-2018, passed 6-25-18 ; amend. Ord. 1111-2019, passed 1-14-19 ; amend. Ord. 1125-2022, passed 8-22-  
207 22 )

208



38 (the “Primary Streets”) in order to facilitate and enhance lively pedestrian activity and  
39 walkability along the main thoroughfares of the District; and

40 **WHEREAS**, the City desires to allow office uses, including medical and dental,  
41 along street frontages except the Primary Streets to enhance the commercial viability of  
42 the District; and

43 **WHEREAS**, the City Council further desires to allow personal services uses along  
44 the Hook Square street frontage only to further enhance the commercial viability of the  
45 District, while ensuring such uses do not become concentrated uses in the District; and

46 **WHEREAS**, the City Council also desires to allow veterinarian uses, along Hook  
47 Square or Canal Street frontage only, provided that no veterinarian use may be located  
48 within 0.25 airline miles of the front door of a proposed veterinarian use to the front door  
49 of an existing veterinarian use within the District; and

50 **WHEREAS**, the City Council finds that the distancing limitations on veterinarian  
51 uses are necessary to curtail and limit exposure to the potential negative effects of the  
52 use, including the potential for increased biological waste and excess noise pollution; and

53 **WHEREAS**, on September 11, 2023, at a duly noticed public hearing in  
54 accordance with law, the City Council, sitting as the Local Planning Agency, reviewed  
55 and recommended approval of this Ordinance with the following recommendations: that  
56 medical and dentist office uses be further defined and that the airline distancing  
57 requirements between veterinarian uses within the District be increased from 0.25 airline  
58 miles to 0.30 airline miles, and determined that it is consistent with the City’s  
59 Comprehensive Plan; and

60 **WHEREAS**, the City Council finds that this proposed Ordinance serves to further  
61 enhance the protection of the public health, safety and welfare.

62 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL**  
63 **OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**<sup>1</sup>

64 **Section 1. Recitals.** That the above recitals are confirmed, adopted, and  
65 incorporated herein and made a part hereof by reference.

66 **Section 2. Amending Code.** That Section 150.070.1 “Miami Springs Gateway  
67 Overlay District” within Chapter 150, “Zoning Code,” of the Code of Ordinances of Miami  
68 Springs, Florida, is hereby amended as follows:

69 **Chapter 150 – ZONING CODE**

70 \* \* \*

71 **ARTICLE VII. BUSINESS DISTRICT**

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<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~double-strikethrough~~ and double underline.

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Section 150-070.1. - Miami Springs Gateway Overlay District.

\* \* \*

(C) Design Standards. The City desires for new and existing buildings within the Gateway District to become more aesthetically pleasing, have architectural elements that highlight the City's history, facilitate pedestrian activity and walkability, and assist in traffic calming. As opposed to a mandate, the City desires to accomplish these objectives through incentives in development standards that will encourage property owners to improve their respective properties in a manner that results in cohesive building design and features throughout the Gateway District. The standards are as follows:

\* \* \*

3. Uses. The uses in the CBD shall remain in effect for the Gateway District, except that hotels shall be prohibited in the Gateway District. ~~Additionally~~ Notwithstanding, first floor uses along road rights-of-way shall be limited to:

- a. Restaurant (and lounge), café, cafeteria.
- b. and/or Retail Use.
- c. Office Use, including medical and dental, along any street frontage except Curtis Parkway and South and North Royal Poinciana Boulevards.
- For purposes of this Section, a Medical or Dental Office Use shall mean a small-scale office with a maximum floor area of 2,000 square feet providing medical or dental treatment where patients are offered medical services, examinations, and treatments, but are not permitted to occupy the premises overnight. This does not include medical or clinical laboratories, urgent care centers, hospitals, emergency rooms, or other similar medium to large-scale medical office uses, which are specifically prohibited.
- d. Personal Services (e.g., barbershops, beauty parlors, physical therapy clinics, massage parlors), with hours of business between 6:00 a.m. and 10:00p.m., along Hook Square frontage only.
- e. Veterinarian Use (which may provide short-term boarding for medical purposes only, for no more than 48 hours), along Hook Square or Canal Street frontage only, provided that no Veterinarian Use may be located within ~~0.25~~ 0.30 airline miles of the front door of an existing Veterinarian Use within the Gateway District. The distance shall be measured from the front door of the proposed Veterinarian Use to the front door of the existing Veterinarian Use.

The ground floor shall contain occupiable, air-conditioned space for permitted commercial uses with a minimum depth of 40 feet from the building façade for those portions of the building along road rights-of-way, except such features as, without limitation, driveways, utility infrastructure, colonnades and outside dining areas. Direct access to such uses and full storefront windows are encouraged. Upper floors may be commercial, office,

111 residential, or a mix of residential, office, and commercial. The mixed-use ratio found in §  
112 150.070 of the Code shall not apply to the Gateway District.

113 \* \* \*

114 **Section 3. Conflicts.** All Sections or parts of Sections of the Code of  
115 Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of  
116 Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

117 **Section 4. Severability.** That the provisions of this Ordinance are declared to  
118 be severable and if any section, sentence, clause or phrase of this Ordinance shall for  
119 any reason be held to be invalid or unconstitutional, such decision shall not affect the  
120 validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but  
121 they shall remain in effect, it being the legislative intent that this Ordinance shall stand  
122 notwithstanding the invalidity of any part.

123 **Section 5. Codification.** That it is the intention of the City Council and it is  
124 hereby ordained that the provisions of this Ordinance shall become and be made a part  
125 of the City Code, that the sections of this Ordinance may be renumbered or relettered to  
126 accomplish such intentions, and that the word Ordinance shall be changed to Section or  
127 other appropriate word.

128 **Section 6. Effective Date.** That this Ordinance shall become effective  
129 immediately upon adoption on second reading.

130 **PASSED ON FIRST READING** on the \_\_ day of \_\_\_\_\_, 2023, on a motion  
131 made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

132 **PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2023,  
133 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_. Upon being put to a  
134 roll call vote, the vote was as follows:

135	Vice Mayor Jorge Santin	_____
136	Councilmember Jacky Bravo	_____
137	Councilmember Dr. Victor Vazquez, Ph.D.	_____
138	Councilmember Dr. Walter Fajet, Ph.D.	_____
139	Mayor Maria Puente Mitchell	_____

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\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC



150 CITY CLERK

151

152 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

153 FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

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157 \_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

158 CITY ATTORNEY

ORDINANCE NO. 2023-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING SECTION 150-070.1, "MIAMI SPRINGS GATEWAY OVERLAY DISTRICT" WITHIN ARTICLE VII, "BUSINESS DISTRICT" OF CHAPTER 150, "ZONING CODE," OF THE CITY'S CODE OF ORDINANCES TO AMEND THE LIST OF USES PERMITTED ON FIRST FLOOR LEVELS ALONG ROAD RIGHTS-OF-WAY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Springs (the "City") finds it periodically necessary to amend its Code of Ordinances (the "Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, on June 25, 2018, the City adopted Ordinance No. 1107-2018 to create the Miami Springs Gateway Overlay District (the "District") and provide regulations for the District, which were amended on January 14, 2019, pursuant to Ordinance No. 1111-2019 and on August 22, 2022, pursuant to Ordinance No. 1125-2022; and

**WHEREAS**, the District regulations currently restrict first floor uses along road rights-of-way to restaurant and retail uses (the "Existing Uses") only; and

~~**WHEREAS**, as a result of changing market demands since the District's creation in 2018, demand for traditional retail uses has decreased; and~~

**WHEREAS**, after review of the District's Existing Uses, the City Council has identified a need to amend the list of uses permitted on first floor levels to provide additional flexibility for businesses that wish to operate in the District; and

**WHEREAS**, the City Council finds that providing additional flexibility as it relates to the list of permitted first floor uses along road rights-of-way in the District will promote a lively business atmosphere. ensure the success of current and future developments in the District, and encourage vibrant pedestrian activity and walkability; and

**WHEREAS**, specifically, the City Council has identified that medical or dental offices, personal services, and veterinarian clinic uses along secondary streets in the District, subject to certain use restrictions and conditions, will enhance the commercial viability and vibrancy of current and future developments in the District while maintaining restaurant and retail uses as the primary uses in the District; and

**WHEREAS**, specifically, the City Council desires to continue allowing only the Existing Uses along Curtiss Parkway and South and North Royal Poinciana Boulevards

**ALTERNATE VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE INCLUDING REVISIONS MADE SUBSEQUENT TO THE OCTOBER 9, 2023 COUNCIL MEETING THAT ARE PRESENTED FOR COUNCIL'S CONSIDERATION ON OCTOBER 23, 2023**

38 (the "Primary Streets") in order to facilitate and enhance lively pedestrian activity and  
39 walkability ~~along the main thoroughfares of in~~ the District; and

40 **WHEREAS**, the City desires to allow medical or dental office uses, ~~including~~  
41 ~~medical and dental, along street frontages except the Primary Streets~~ to enhance the  
42 commercial viability of the District; and

43 **WHEREAS**, the City Council further desires to allow personal services ~~uses along~~  
44 ~~the Hook Square street frontage only~~ to further enhance the commercial viability of the  
45 District, while ensuring such uses do not become concentrated uses in the District; and

46 **WHEREAS**, the City Council also desires to allow veterinarian uses, ~~along Hook~~  
47 ~~Square or Canal Street frontage only~~, provided that no veterinarian use may be located  
48 within ~~0.25~~ 0.30 airline miles of the front door of a proposed veterinarian use to the front  
49 door of an existing veterinarian use within the District; and

50 **WHEREAS**, the City Council finds that the distancing limitations on veterinarian  
51 uses are necessary to curtail and limit exposure to the potential negative effects of the  
52 use, including the potential for increased biological waste and excess noise pollution; and

53 **WHEREAS**, on September 11, 2023, at a duly noticed public hearing in  
54 accordance with law, the City Council, sitting as the Local Planning Agency, reviewed  
55 and recommended approval of this Ordinance with the following recommendations: that  
56 medical and dentist office uses be further defined and that the airline distancing  
57 requirements between veterinarian uses within the District be increased from 0.25 airline  
58 miles to 0.30 airline miles, and determined that it is consistent with the City's  
59 Comprehensive Plan; and

60 **WHEREAS**, the City Council finds that this proposed Ordinance serves to further  
61 enhance the protection of the public health, safety and welfare.

62 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL**  
63 **OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:<sup>1</sup>**

64 **Section 1. Recitals.** That the above recitals are confirmed, adopted, and  
65 incorporated herein and made a part hereof by reference.

66 **Section 2. Amending Code.** That Section 150.070.1 "Miami Springs Gateway  
67 Overlay District" within Chapter 150, "Zoning Code," of the Code of Ordinances of Miami  
68 Springs, Florida, is hereby amended as follows:

69 **Chapter 150 – ZONING CODE**

<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with yellow highlighted double strikethrough and double underline. On October 9, 2023, the City Council discussed this Ordinance, but deferred the Ordinance for further consideration at a future date and time. Changes made subsequent to October 9, 2023 for consideration on October 23, 2023 are indicated with teal highlight and the corresponding underline or ~~strikethrough~~.

ALTERNATE VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE INCLUDING REVISIONS MADE SUBSEQUENT TO THE OCTOBER 9, 2023 COUNCIL MEETING THAT ARE PRESENTED FOR COUNCIL'S CONSIDERATION ON OCTOBER 23, 2023

\* \* \*

ARTICLE VII. BUSINESS DISTRICT

\* \* \*

Section 150-070.1. - Miami Springs Gateway Overlay District.

\* \* \*

(C) Design Standards. The City desires for new and existing buildings within the Gateway District to become more aesthetically pleasing, have architectural elements that highlight the City's history, facilitate pedestrian activity and walkability, and assist in traffic calming. As opposed to a mandate, the City desires to accomplish these objectives through incentives in development standards that will encourage property owners to improve their respective properties in a manner that results in cohesive building design and features throughout the Gateway District. The standards are as follows:

\* \* \*

3. Uses. The uses in the CBD shall remain in effect for the Gateway District, except that hotels shall be prohibited in the Gateway District. Additionally Notwithstanding, first floor uses along road rights-of-way shall be limited to:

a. Restaurant (and lounge), café, cafeteria.

b. and/or Retail Use.

c. Medical or Dental Office Use, including medical and dental, along any street frontage except Curtis Parkway and South and North Royal Poinciana Boulevards.

For purposes of this Section, a Medical or Dental Office Use shall mean a small-scale office with a maximum floor area of 2,000 square feet providing medical or dental treatment where patients are offered medical services, examinations, and treatments, but are not permitted to occupy the premises overnight. This does not include medical or clinical laboratories, urgent care centers, hospitals, emergency rooms, or other similar medium to large-scale medical office uses, which are specifically prohibited.

d. Personal Services (e.g., barbershops, beauty parlors, physical therapy clinics, massage parlors), with hours of business between 6:00 a.m. and 10:00 p.m., along Hook Square frontage only.

e. Veterinarian Use (which may provide short-term boarding for medical purposes only, for no more than 48 hours), along Hook Square or Canal Street frontage only, provided that no Veterinarian Use may be located within 0.25 0.30 airline miles of the front door of an existing Veterinarian Use within the Gateway District. The distance shall be measured from the front door of the proposed Veterinarian Use to the front door of the existing Veterinarian Use.

The ground floor shall contain occupiable, air-conditioned space for permitted commercial uses with a minimum depth of 40 feet from the building façade for those portions of the building along road rights-of-way, except such features as, without limitation, driveways,

ALTERNATE VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE INCLUDING REVISIONS MADE SUBSEQUENT TO THE OCTOBER 9, 2023 COUNCIL MEETING THAT ARE PRESENTED FOR COUNCIL'S CONSIDERATION ON OCTOBER 23, 2023

**ALTERNATE VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE INCLUDING REVISIONS MADE SUBSEQUENT TO THE OCTOBER 9, 2023 COUNCIL MEETING THAT ARE PRESENTED FOR COUNCIL'S CONSIDERATION ON OCTOBER 23, 2023**

110 utility infrastructure, colonnades and outside dining areas. Direct access to such uses and  
111 full storefront windows are encouraged. Upper floors may be commercial, office,  
112 residential, or a mix of residential, office, and commercial. The mixed-use ratio found in §  
113 150.070 of the Code shall not apply to the Gateway District.

114 \* \* \*

115 **Section 3. Conflicts.** All Sections or parts of Sections of the Code of  
116 Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of  
117 Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

118 **Section 4. Severability.** That the provisions of this Ordinance are declared to  
119 be severable and if any section, sentence, clause or phrase of this Ordinance shall for  
120 any reason be held to be invalid or unconstitutional, such decision shall not affect the  
121 validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but  
122 they shall remain in effect, it being the legislative intent that this Ordinance shall stand  
123 notwithstanding the invalidity of any part.

124 **Section 5. Codification.** That it is the intention of the City Council and it is  
125 hereby ordained that the provisions of this Ordinance shall become and be made a part  
126 of the City Code, that the sections of this Ordinance may be renumbered or relettered to  
127 accomplish such intentions, and that the word Ordinance shall be changed to Section or  
128 other appropriate word.

129 **Section 6. Effective Date.** That this Ordinance shall become effective  
130 immediately upon adoption on second reading.

131 **PASSED ON FIRST READING** on the \_\_ day of \_\_\_\_\_, 2023, on a motion  
132 made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

133 **PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2023,  
134 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_. Upon being put to a  
135 roll call vote, the vote was as follows:

- 136 Vice Mayor Jorge Santin \_\_\_\_\_
- 137 Councilmember Jacky Bravo \_\_\_\_\_
- 138 Councilmember Dr. Victor Vazquez, Ph.D. \_\_\_\_\_
- 139 Councilmember Dr. Walter Fajet, Ph.D. \_\_\_\_\_
- 140 Mayor Maria Puente Mitchell \_\_\_\_\_

141  
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144 \_\_\_\_\_  
145 MARIA PUENTE MITCHELL  
146 MAYOR

ATTEST:

**ALTERNATE VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE INCLUDING REVISIONS MADE SUBSEQUENT TO THE OCTOBER 9, 2023 COUNCIL MEETING THAT ARE PRESENTED FOR COUNCIL'S CONSIDERATION ON OCTOBER 23, 2023**

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150 ERIKA GONZALEZ, MMC

151 CITY CLERK

152

153 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

154 FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

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158 WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

159 CITY ATTORNEY

**ALTERNATE VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE INCLUDING REVISIONS MADE SUBSEQUENT TO THE OCTOBER 9, 2023 COUNCIL MEETING THAT ARE PRESENTED FOR COUNCIL'S CONSIDERATION ON OCTOBER 23, 2023**

ORDINANCE NO. 2023-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING SECTION 150-070.1, "MIAMI SPRINGS GATEWAY OVERLAY DISTRICT" WITHIN ARTICLE VII, "BUSINESS DISTRICT" OF CHAPTER 150, "ZONING CODE," OF THE CITY'S CODE OF ORDINANCES TO AMEND THE LIST OF USES PERMITTED ON FIRST FLOOR LEVELS ALONG ROAD RIGHTS-OF-WAY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Springs (the "City") finds it periodically necessary to amend its Code of Ordinances (the "Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, on June 25, 2018, the City adopted Ordinance No. 1107-2018 to create the Miami Springs Gateway Overlay District (the "District") and provide regulations for the District, which were amended on January 14, 2019, pursuant to Ordinance No. 1111-2019 and on August 22, 2022, pursuant to Ordinance No. 1125-2022; and

**WHEREAS**, the District regulations currently restrict first floor uses along road rights-of-way to restaurant and retail uses (the "Existing Uses") only; and

**WHEREAS**, after review of the District's Existing Uses, the City Council has identified a need to amend the list of uses permitted on first floor levels to provide additional flexibility for businesses that wish to operate in the District; and

**WHEREAS**, the City Council finds that providing additional flexibility as it relates to the list of permitted first floor uses along road rights-of-way in the District will promote a lively business atmosphere, ensure the success of current and future developments in the District, and encourage vibrant pedestrian activity and walkability; and

**WHEREAS**, specifically, the City Council has identified that medical or dental offices, personal services, and veterinarian clinic uses, subject to certain use restrictions and conditions, will enhance the commercial viability and vibrancy of current and future developments in the District while maintaining restaurant and retail uses as the primary uses in the District; and

**WHEREAS**, specifically, the City Council desires to continue allowing the Existing Uses in order to facilitate and enhance lively pedestrian activity and walkability in the District; and

**WHEREAS**, the City desires to allow medical or dental office uses to enhance the commercial viability of the District; and





**ALTERNATE (CLEAN) VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE AND REFLECTS WHAT THE TEXT OF THE CODE WOULD ULTIMATELY LOOK LIKE IF THE ALTERNATIVE VERSION WERE ADOPTED AS PRESENTED.**

77

\* \* \*

78 3. Uses. The uses in the CBD shall remain in effect for the Gateway District, except that  
79 hotels shall be prohibited in the Gateway District. Notwithstanding, first floor uses along  
80 road rights-of-way shall be limited to:

81 a. Restaurant (and lounge), café, cafeteria.

82 b. Retail Use.

83 c. Medical or Dental Office Use. For purposes of this Section, a *Medical or Dental*  
84 *Office Use* shall mean a small-scale office with a maximum floor area of 2,000  
85 square feet providing medical or dental treatment where patients are offered  
86 medical services, examinations, and treatments, but are not permitted to occupy  
87 the premises overnight. This does not include medical or clinical laboratories,  
88 urgent care centers, hospitals, emergency rooms, or other similar medium to large-  
89 scale medical office uses, which are specifically prohibited.

90 d. Personal Services (e.g., barbershops, beauty parlors, physical therapy clinics),  
91 with hours of business between 6:00 a.m. and 10:00 p.m.

92 e. Veterinarian Use (which may provide short-term boarding for medical purposes  
93 only, for no more than 48 hours), provided that no Veterinarian Use may be located  
94 within 0.30 airline miles of the front door of an existing Veterinarian Use within the  
95 Gateway District. The distance shall be measured from the front door of the  
96 proposed Veterinarian Use to the front door of the existing Veterinarian Use.

97 The ground floor shall contain occupiable, air-conditioned space for permitted commercial  
98 uses with a minimum depth of 40 feet from the building façade for those portions of the  
99 building along road rights-of-way, except such features as, without limitation, driveways,  
100 utility infrastructure, colonnades and outside dining areas. Direct access to such uses and  
101 full storefront windows are encouraged. Upper floors may be commercial, office,  
102 residential, or a mix of residential, office, and commercial. The mixed-use ratio found in §  
103 150.070 of the Code shall not apply to the Gateway District.

104

\* \* \*

105 **Section 3. Conflicts.** All Sections or parts of Sections of the Code of  
106 Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of  
107 Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

108 **Section 4. Severability.** That the provisions of this Ordinance are declared to  
109 be severable and if any section, sentence, clause or phrase of this Ordinance shall for  
110 any reason be held to be invalid or unconstitutional, such decision shall not affect the  
111 validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but  
112 they shall remain in effect, it being the legislative intent that this Ordinance shall stand  
113 notwithstanding the invalidity of any part.

**ALTERNATE (CLEAN) VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE AND REFLECTS WHAT THE TEXT OF THE CODE WOULD ULTIMATELY LOOK LIKE IF THE ALTERNATIVE VERSION WERE ADOPTED AS PRESENTED.**

**ALTERNATE (CLEAN) VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE AND REFLECTS WHAT THE TEXT OF THE CODE WOULD ULTIMATELY LOOK LIKE IF THE ALTERNATIVE VERSION WERE ADOPTED AS PRESENTED.**

114 **Section 5. Codification.** That it is the intention of the City Council and it is  
115 hereby ordained that the provisions of this Ordinance shall become and be made a part  
116 of the City Code, that the sections of this Ordinance may be renumbered or relettered to  
117 accomplish such intentions, and that the word Ordinance shall be changed to Section or  
118 other appropriate word.

119 **Section 6. Effective Date.** That this Ordinance shall become effective  
120 immediately upon adoption on second reading.

121 **PASSED ON FIRST READING** on the \_\_ day of \_\_\_\_\_, 2023, on a motion  
122 made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

123 **PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2023,  
124 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_. Upon being put to a  
125 roll call vote, the vote was as follows:

126	Vice Mayor Jorge Santin	_____
127	Councilmember Jacky Bravo	_____
128	Councilmember Dr. Victor Vazquez, Ph.D.	_____
129	Councilmember Dr. Walter Fajet, Ph.D.	_____
130	Mayor Maria Puente Mitchell	_____

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133  
134 \_\_\_\_\_  
135 MARIA PUENTE MITCHELL  
136 MAYOR

137 ATTEST:  
138  
139 \_\_\_\_\_  
140 ERIKA GONZALEZ, MMC  
141 CITY CLERK

142  
143 APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
144 FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

145  
146  
147 \_\_\_\_\_  
148 WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
149 CITY ATTORNEY

**ALTERNATE (CLEAN) VERSION - THIS IS AN ALTERNATE VERSION OF THE PROPOSED ORDINANCE AND REFLECTS WHAT THE TEXT OF THE CODE WOULD ULTIMATELY LOOK LIKE IF THE ALTERNATIVE VERSION WERE ADOPTED AS PRESENTED.**



# AGENDA MEMORANDUM

**Meeting Date:** October 23, 2023

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** JC Jimenez, City Manager

**From:** Tammy Romero, Assistant City Manager

**Subject:** River Cities Gazette- Local Advertising



## RECOMMENDATION:

Recommendation by staff that Council approve an expenditure to River Cities Gazette, as a sole source local print publishing provider, on an "as needed basis" in the amount of \$25,000.00. The River Cities Gazette provides for expanded access reaching every residential home and including local businesses within City limits through mailed or delivered publishing newspaper. In addition, the City fulfills its publishing requirements for legal notices in the generally circulated Daily Business Review and the Miami Herald, additionally on its Official Website. The City utilizes the Gazette for courtesy notices, City's events, and local City updates. Funds were budgeted in the FY23/24 Budget pursuant to Section §31.11 (E)(6)(c) of the City Code.

**DISCUSSION:** Printed advertising for greater local access and more informative notification of advertising and legal notices to the residents of public ordinances and state and federal grant awards of the City and for the four-page full color monthly News Bulletin mailed to all residents.

**FISCAL IMPACT:** None as funds were approved in the FY 23/23 Budget.

**Submission Date and Time:** 10/9/2023 11:10 AM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
Department: <u>City Managers</u>	Dept. Head: _____	Dept./ Desc.: <u>Various Depts.</u>
Prepared by: <u>Tammy Romero, ACM</u>	Procurement: _____	Account No.: <u>Various Departmental accounts</u>
Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Asst. City Mgr.: <u></u>	Additional Funding: _____
Budgeted/ Funded: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City Manager: <u></u>	Amount previously approved: \$ _____
		Current request: \$ <u>25,000.00</u>
		Total vendor amount: \$ <u>25,000.00</u>

**RESOLUTION NO. 2023-\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING THE PURCHASE OF LOCAL PRINTING PUBLICATION SERVICES FROM THE RIVER CITIES GAZETTE, INC. IN AN AMOUNT NOT TO EXCEED BUDGETED FUNDS; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the “City”) is in need of local printing publication services (the “Services”) to publish the City’s monthly News Bulletin, courtesy notices, and legal notices in a newspaper publication printed and published periodically within the City; and

**WHEREAS**, the River Cities Gazette, Inc. (the “Vendor”) is the sole provider of the Services within the City; and

**WHEREAS**, the City Manager recommends that the purchase of the Services be deemed exempt from competitive bidding procedures of the City Code pursuant to Section 31-11(E)(6)(c) of the City Code as a sole source purchase; and

**WHEREAS**, pursuant to Section 31-11(E)(6)(c) of the City Code, the City Council desires to authorize the City Manager to purchase the Services in an amount not to exceed budgeted funds; and

**WHEREAS**, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Approval.** That the City Council hereby approves of the purchase of the Services from the Vendor.

**Section 3. Authorization.** That the City Council hereby authorizes the City Manager to execute any purchase order or required documentation for the purchase of the Services in an amount not to exceed budgeted funds, subject to the approval by the City Attorney as to form, content, and legal sufficiency.

**Section 4. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Jacky Bravo	_____
Councilmember Dr. Walter Fajet, Ph.D.	_____
Councilmember Jorge Santin	_____
Councilmember Dr. Victor Vazquez, Ph.D.	_____
Mayor Maria Puente Mitchell	_____

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY



Advertising Rates and Specifications for the City of Miami Springs

**Full Color 4-page News Bulletin -\$1,600.00 monthly**

**1/8 page Ad- \$75.00**

**1/4 page Ad- \$125.00 each**

**1/2 page color -\$375.00 each**

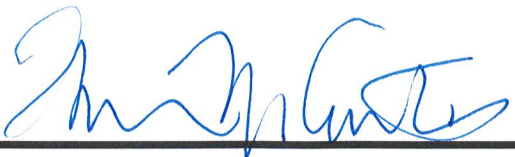
**Full page Ad- \$500.00 each**

## **Curtis Publishing Company**

45 Curtiss Parkway, Suite D | Miami Springs, FL 33166

786-262-4616

digest@curtispub.net

x   
\_\_\_\_\_

**RESOLUTION NO. 2023-\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING THE PURCHASE OF TASER 10 BUNDLES AND RELATED TRAINING AND SOFTWARE SERVICES FROM AXON ENTERPRISE, INC. IN AN AMOUNT NOT TO EXCEED \$199,800; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AUTHORIZING THE SALE OR DISPOSITION OF SURPLUS PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the “City”) Police Department is in need of 45 TASER 10 bundles (the “Equipment”) and related training and software services (the “Software Services”) to replace existing tasers that have reached the end of their useful life and to facilitate the provision of the Police Department’s day-to-day operations; and

**WHEREAS**, Axon Enterprise, Inc. (the “Vendor”) is the sole provider of the Equipment and the Software Services and has provided the quote attached hereto as Exhibit “A” (the “Quote”) for the purchase of the Equipment and Software Services and an agreement attached hereto as Exhibit “B” (the “Agreement”) relating to the same; and

**WHEREAS**, the City Manager recommends that the purchase of the Equipment and Software Services be deemed exempt from competitive bidding procedures of the City Code pursuant to Section 31-11(E)(6)(c) of the City Code as a sole source purchase; and

**WHEREAS**, pursuant to Section 31-11(E)(6)(c) of the City Code, the City Council desires to approve the purchase of the Equipment and the Software Service from the Vendor consistent with the Quote in an amount not to exceed \$199,800 and authorize the City Manager to enter into the Agreement for the Equipment and the Software Services; and

**WHEREAS**, the City Council declares the taser equipment listed on Exhibit “C” attached hereto (the “Surplus Equipment”) as surplus property as the Surplus Equipment has become obsolete, has outlived its usefulness, has become inadequate for the public purposes for which it was intended, or is no longer needed for public purposes in light of the purchase authorized by this Resolution, and authorizes the City Manager to sell or

otherwise dispose of the Surplus Equipment; and

**WHEREAS**, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Approval.** That the City Council hereby approves of the purchase of the Equipment and the Software Services from the Vendor in an amount not to exceed \$199,800 consistent with the Quote attached hereto as Exhibit "A."

**Section 3. Authorization.** That the City Council hereby authorizes the City Manager to execute the Agreement for the Equipment and Software Services in an amount not to exceed \$199,800 in substantially the form attached hereto as Exhibit "B," subject to the approval by the City Attorney as to form, content, and legal sufficiency.

**Section 4. Implementation.** That the City Manager is authorized to execute any purchase order, required or related agreements, amendments, or required documentation for the purchases described in this Resolution, subject to approval by the City Attorney as to form and legality, and to take any action that is reasonably necessary to implement the purpose of this Resolution.

**Section 5. Declaration of Surplus Property.** That the Surplus Equipment has become obsolete, has outlived its usefulness, has become inadequate for the public purposes for which it was intended, or is no longer needed for public purposes. Accordingly, the City Council declares the Surplus Equipment listed on Exhibit "C" attached hereto to be surplus personal property of the City.

**Section 6. Authorizing Sale or Disposition of Surplus Property.** That the City Manager is hereby authorized to sell or dispose of the Surplus Equipment by public auction or other procedure determined by the City Manager to be in the best interests of the City. Any surplus property items acquired by the City pursuant to governmental grant programs shall only be disposed of in accordance with procedures and criteria applicable to such grant programs.



**Section 7. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Jacky Bravo	_____
Councilmember Dr. Walter Fajet, Ph.D.	_____
Councilmember Jorge Santin	_____
Councilmember Dr. Victor Vazquez, Ph.D.	_____
Mayor Maria Puente Mitchell	_____

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY



**Axon Enterprise, Inc.**  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

Q-508461-45189.698GM

Issued: 09/20/2023

Quote Expiration: 10/31/2023

Estimated Contract Start Date: 11/01/2023

Account Number: 120152

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Business;Delivery;Invoice-201 Westward Dr 201 Westward Dr Miami Springs, FL 33166-5259 USA	Miami Springs Police Dept. - FL 201 Westward Dr Miami Springs FL 33166-5259 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Griffin McKean Phone: Email: gmckean@axon.com Fax:	Albert Sandoval Phone: 305-888-5286 Email: asandoval@mspd.us Fax:

### Quote Summary

Program Length	60 Months
<b>TOTAL COST</b>	<b>\$199,800.00</b>
<b>ESTIMATED TOTAL W/ TAX</b>	<b>\$199,800.00</b>

### Discount Summary

Average Savings Per Year	\$4,972.60
<b>TOTAL SAVINGS</b>	<b>\$24,863.00</b>

### Payment Summary

Date	Subtotal	Tax	Total
	\$199,800.00	\$0.00	\$199,800.00
<b>Total</b>	<b>\$199,800.00</b>	<b>\$0.00</b>	<b>\$199,800.00</b>

Quote Unbundled Price:	\$224,663.00
Quote List Price:	\$211,541.00
Quote Subtotal:	\$199,800.00

## Pricing

*All deliverables are detailed in Delivery Schedules section lower in proposal*

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
<b>Program</b>									
T10Cert	TASER 10 Certification Bundle	45	60	\$80.69	\$75.83	\$74.00	\$199,800.00	\$0.00	\$199,800.00
<b>A la Carte Services</b>									
85149	CEW 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1			\$6,800.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>							<b>\$199,800.00</b>	<b>\$0.00</b>	<b>\$199,800.00</b>

## Delivery Schedule

### Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
TASER 10 Certification Bundle	100390	TASER 10 HANDLE, YLW, CLASS 3R	45	10/01/2023
TASER 10 Certification Bundle	100390	TASER 10 HANDLE, YLW, CLASS 3R	1	10/01/2023
TASER 10 Certification Bundle	100393	TASER 10 LIVE DUTY MAGAZINE BLACK	45	10/01/2023
TASER 10 Certification Bundle	100393	TASER 10 LIVE DUTY MAGAZINE BLACK	1	10/01/2023
TASER 10 Certification Bundle	100394	TASER 10 HALT TRN MAGAZINE BLUE (HOOK-AND-LOOP-TRAINING)	2	10/01/2023
TASER 10 Certification Bundle	100395	TASER 10 LIVE TRAINING MAGAZINE PURPLE	2	10/01/2023
TASER 10 Certification Bundle	100396	TASER 10 INERT MAGAZINE RED	2	10/01/2023
TASER 10 Certification Bundle	100399	TASER 10 LIVE CARTRIDGE	900	10/01/2023
TASER 10 Certification Bundle	100400	TASER 10 HALT CARTRIDGE	270	10/01/2023
TASER 10 Certification Bundle	100401	TASER 10 INERT CARTRIDGE	18	10/01/2023
TASER 10 Certification Bundle	100623	ENHANCED HOOK-AND-LOOP TRAINING (HALT) SUIT (V2)	1	10/01/2023
TASER 10 Certification Bundle	20018	TASER BATTERY PACK, TACTICAL	45	10/01/2023
TASER 10 Certification Bundle	20018	TASER BATTERY PACK, TACTICAL	8	10/01/2023
TASER 10 Certification Bundle	20018	TASER BATTERY PACK, TACTICAL	1	10/01/2023
TASER 10 Certification Bundle	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	1	10/01/2023
TASER 10 Certification Bundle	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	1	10/01/2023
TASER 10 Certification Bundle	74200	TASER 6-BAY DOCK AND CORE	1	10/01/2023
TASER 10 Certification Bundle	80087	TASER TARGET, CONDUCTIVE, PROFESSIONAL (RUGGEDIZED)	1	10/01/2023
TASER 10 Certification Bundle	80090	TARGET FRAME, PROFESSIONAL, 27.5 IN. X 75 IN., TASER 7	1	10/01/2023
TASER 10 Certification Bundle	100399	TASER 10 LIVE CARTRIDGE	90	10/01/2024
TASER 10 Certification Bundle	100400	TASER 10 HALT CARTRIDGE	270	10/01/2024
TASER 10 Certification Bundle	100399	TASER 10 LIVE CARTRIDGE	90	10/01/2025
TASER 10 Certification Bundle	100400	TASER 10 HALT CARTRIDGE	270	10/01/2025
TASER 10 Certification Bundle	100399	TASER 10 LIVE CARTRIDGE	90	10/01/2026
TASER 10 Certification Bundle	100400	TASER 10 HALT CARTRIDGE	270	10/01/2026
TASER 10 Certification Bundle	100399	TASER 10 LIVE CARTRIDGE	90	10/01/2027
TASER 10 Certification Bundle	100400	TASER 10 HALT CARTRIDGE	270	10/01/2027

### Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
TASER 10 Certification Bundle	20248	TASER 7 EVIDENCE.COM LICENSE	45	11/01/2023	10/31/2028
TASER 10 Certification Bundle	20248	TASER 7 EVIDENCE.COM LICENSE	1	11/01/2023	10/31/2028

### Services

Bundle	Item	Description	QTY
TASER 10 Certification Bundle	100751	TASER 10 DUTY CARTRIDGE REPLACEMENT ACCESS PROGRAM	45
A la Carte	85149	CEW 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1

## Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
TASER 10 Certification Bundle	100704	EXT WARRANTY, TASER 10 HANDLE	45	10/01/2024	10/31/2028
TASER 10 Certification Bundle	100704	EXT WARRANTY, TASER 10 HANDLE	1	10/01/2024	10/31/2028
TASER 10 Certification Bundle	80374	EXT WARRANTY, TASER 7 BATTERY PACK	45	10/01/2024	10/31/2028
TASER 10 Certification Bundle	80374	EXT WARRANTY, TASER 7 BATTERY PACK	1	10/01/2024	10/31/2028
TASER 10 Certification Bundle	80374	EXT WARRANTY, TASER 7 BATTERY PACK	8	10/01/2024	10/31/2028
TASER 10 Certification Bundle	80396	EXT WARRANTY, TASER 7 SIX BAY DOCK	1	10/01/2024	10/31/2028

## Payment Details

### Nov 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	85149	CEW 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

### Dec

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	T10Cert	TASER 10 Certification Bundle	45	\$39,960.00	\$0.00	\$39,960.00
Year 2	T10Cert	TASER 10 Certification Bundle	45	\$39,960.00	\$0.00	\$39,960.00
Year 3	T10Cert	TASER 10 Certification Bundle	45	\$39,960.00	\$0.00	\$39,960.00
Year 4	T10Cert	TASER 10 Certification Bundle	45	\$39,960.00	\$0.00	\$39,960.00
Year 5	T10Cert	TASER 10 Certification Bundle	45	\$39,960.00	\$0.00	\$39,960.00
<b>Total</b>				<b>\$199,800.00</b>	<b>\$0.00</b>	<b>\$199,800.00</b>

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

## Standard Terms and Conditions

### Axon Enterprise Inc. Sales Terms and Conditions

#### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

#### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

#### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

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Signature

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Date Signed

9/20/2023





This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the agency listed below or, if no agency is listed below, the agency on the Quote attached hereto ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Agency for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3. **Payment.** Axon invoices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Agency will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4. **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7. **Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Agency's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one- (1-) year hardware warranty through the extended warranty term.
- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "**AS IS,**" without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability,

fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.

- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.
- 7.3.1. If Agency exchanges an Axon Device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Agency must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.
- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Agency resells Axon Devices.
- 7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Agency confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**
- 7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**
- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions).
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Agency and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions), if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Agency, Axon may provide certain products and services to Agency, as a charitable donation under the Axon Aid program. In such event, Agency expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Agency agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Agency expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately upon notice to the Agency.

8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services,

Title: Master Services and Purchasing Agreement between Axon and Agency

Department: Legal

Version: 18.0

Release Date: 6/26/2023

and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9. **Axon Device Warnings.** See [www.axon.com/legal](http://www.axon.com/legal) for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Agency against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; (c) disputes between Agency and a third-party over Agency's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Agency's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
  - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
  - 16.2. **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
  - 16.3. **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality. "Confidential Information"** means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Agency receives a public records request to disclose Axon Confidential Information, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.



18. **General.**

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Agency shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to legal@axon.com.
- 18.12. **Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

**AXON:**

**AGENCY:**

Axon Enterprise, Inc.

\_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**Axon Cloud Services Terms of Use Appendix**

1. Definitions.
  - a. **"Agency Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.
  - b. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.
  - c. **"Non-Content Data"** is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.
  - d. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
2. **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.
3. **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.
4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.
5. **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.
  - a. Agency will also maintain the security of end usernames and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.
  - b. To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.
6. **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic



## Master Services and Purchasing Agreement for Agency

screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for six (6) months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement agency that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Agency is prohibited from storing data for other law enforcement agencies; and (iii) Agency may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Agency Content created by Axon Devices or Evidence.com.

9. **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
10. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
12. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 or OSP 10 bundle. During Agency's Axon Records Subscription Term, if any, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.
  - a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")
  - b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
  - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.
  - d. Users of Axon Records at the Agency may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon

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may limit usage should the Agency exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.

13. **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
  - a. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
  - b. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
  - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - d. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
  - e. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
  - f. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
  - g. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
14. **After Termination.** Axon will not delete Agency Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
15. **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
16. **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
17. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Privacy, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

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## Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
  - 2.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1<sup>1</sup>. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Agency Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("**New Use Case**").
  - 2.2. **Expiration of ACEIP Tier 1.** Agency consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Agency.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique

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<sup>1</sup> For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.





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to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Agency into ACEIP Tier 2 until Axon and Agency agree to terms in writing providing for such participation in ACEIP Tier 2.



Professional Services Appendix

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

- 1. Utilization of Services. Agency must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.
2. Axon Full Service (Axon Full Service). Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than four (4) consecutive on-site days, Agency must purchase additional days. Axon Full Service options include:

Table with 1 column and 10 rows detailing Axon Full Service options: System set up and configuration, Dock configuration, Best practice implementation planning session, System Admin and troubleshooting training sessions, Axon instructor training (Train the Trainer), Evidence sharing training, End user go-live training and support sessions, Implementation document packet, and Post go-live review.

- 3. Body-Worn Camera Starter Service (Axon Starter). Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency requires more than one (1) day of on-site Services, Agency must purchase additional on-site Services. The Axon Starter options include:

Table with 1 column and 1 row detailing Axon Starter options: System set up and configuration (Remote Support).



<p><b>Dock configuration</b></p> <ul style="list-style-type: none"> <li>• Work with Agency to decide the ideal location of Dock setup and set configurations on Dock</li> <li>• Authenticate Dock with Axon Evidence using "Administrator" credentials from Agency</li> <li>• Does not include physical mounting of docks</li> </ul>
<p><b>Axon instructor training (Train the Trainer)</b> Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>End user go-live training and support sessions</b></p> <ul style="list-style-type: none"> <li>• Assistance with device set up and configuration</li> <li>• Training on device use, Axon Evidence, and Evidence Sync</li> </ul>
<p><a href="#">Implementation document packet</a> Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories &amp; roles guide</p>

- Body-Worn Camera Virtual 1-Day Service (Axon Virtual).** Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.
- CEW Services Packages.** CEW Services Packages are detailed below:

<p><b>System set up and configuration</b></p> <ul style="list-style-type: none"> <li>• Configure Axon Evidence categories &amp; custom roles based on Agency need.</li> <li>• Troubleshoot IT issues with Axon Evidence.</li> <li>• Register users and assign roles in Axon Evidence.</li> <li>• <b>For the CEW Full Service Package:</b> On-site assistance included</li> <li>• <b>For the CEW Starter Package:</b> Virtual assistance included</li> </ul>
<p><b>Dedicated Project Manager</b> Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout</p>
<p><b>Best practice implementation planning session to include:</b></p> <ul style="list-style-type: none"> <li>• Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies</li> <li>• Discuss the importance of entering metadata and best practices for digital data management</li> <li>• Provide referrals to other agencies using TASER CEWs and Axon Evidence</li> <li>• <b>For the CEW Full Service Package:</b> On-site assistance included</li> <li>• <b>For the CEW Starter Package:</b> Virtual assistance included</li> </ul>
<p><b>System Admin and troubleshooting training sessions</b> On-site sessions providing a step-by-step explanation and assistance for Agency's configuration of security, roles &amp; permissions, categories &amp; retention, and other specific settings for Axon Evidence</p>
<p><b>Axon Evidence Instructor training</b></p> <ul style="list-style-type: none"> <li>• Provide training on the Axon Evidence to educate instructors who can support Agency's subsequent Axon Evidence training needs.</li> <li>• <b>For the CEW Full Service Package:</b> Training for up to 3 individuals at Agency</li> <li>• <b>For the CEW Starter Package:</b> Training for up to 1 individual at Agency</li> </ul>
<p><b>TASER CEW inspection and device assignment</b> Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.</p>
<p><b>Post go-live review</b> <b>For the CEW Full Service Package:</b> On-site assistance included. <b>For the CEW Starter Package:</b> Virtual assistance included.</p>

- Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

<p><b>Archival of CEW Firing Logs</b> Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.</p>
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**Return of Old Weapons**

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.  
Axon will provide Agency with a Certificate of Destruction

\*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which Services are appropriate. The VR Service training options include:

<p><b>System set up and configuration (Remote Support)</b></p> <ul style="list-style-type: none"><li>• Instructor-led setup of Axon VR headset content</li><li>• Configure agency settings based on Agency need</li><li>• Troubleshoot IT issues with Axon VR headset</li></ul>
<p><b>Axon instructor training (Train the Trainer)</b></p> <p>Training for up to five (5) Agency's in-house instructors who can support Agency's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>Classroom and practical training sessions</b></p> <p>Step-by-step explanation and assistance for Agency's configuration of Axon VR CET and SIM functionality, basic operation, and best practices</p>

8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency's requires more than one (1) day of on-site Services, Agency must purchase additional on-site Services. The Axon Air, On-Site training options include:

<p><b>System set up and configuration (Remote Support)</b></p> <ul style="list-style-type: none"><li>• Instructor-led setup of Axon Air App (ASDS)</li><li>• Configure agency settings based on Agency need</li><li>• Configure drone controller</li><li>• Troubleshoot IT issues with Axon Evidence</li></ul>
<p><b>Axon instructor training (Train the Trainer)</b></p> <p>Training for Agency's in-house instructors who can support Agency's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>Classroom and practical training sessions</b></p> <p>Step-by-step explanation and assistance for Agency's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices</p>

9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service.**

- a. **Purchases of 50 SSA units or more:** Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Agency is responsible for providing a suitable work/training area.
- b. **Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration.

11. **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

12. **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.



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13. **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
14. **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it
15. **Acceptance.** When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional services.
16. **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



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**Technology Assurance Plan Appendix**

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan.** If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term.** OSP 7 or OSP 10 begins on the date specified in the Quote ("OSP Term").
4. **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Agency purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
5. **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Agency.
7. **Upgrade Change.** If Agency wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Agency must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device.** Within thirty (30) days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
9. **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
  - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
  - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
  - 9.3. Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.



TASER 7 Appendix

This TASER 7 Appendix applies to Agency’s TASER 7, OSP 7, or OSP 7 Plus purchase from Axon, if applicable.

- 1. Duty Cartridge Replenishment Plan. If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. Training. If the Quote includes a training voucher, Agency must use the voucher within one (1) year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency’s responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
3. TASER Upgrade. If Agency purchases Axon’s 10-year certification program for Axon’s latest version of its TASER energy weapon ("Certification Program") and has no outstanding payment obligations as of the beginning of the sixth (6th) year of the Certification Program, Agency will qualify for an upgrade to any subsequent version of the Certification Program ("CEW Upgrade"). Agency will receive the CEW Upgrade at no additional cost, only to the extent such subsequent version of the Certification Program includes the same products or features as the Certification Program purchased by Agency. If Agency wants to upgrade to a Certification Program that includes additional products or features, Agency will pay the additional cost associated with such products and features. For the avoidance of doubt, Agency is not required to upgrade to any subsequent version of the Certification Program. Axon may ship the CEW Upgrade as scheduled in the Quote without prior confirmation from agency unless the Parties agree in writing otherwise at least ninety (90) days in advance. If necessary to maintain compatibility among Axon Devices, within thirty (30) days of receiving the CEW Upgrade, Agency must, if requested by Axon, return all hardware and related accessories received in connection with the Certification Program to Axon. In such event, Agency must ship batteries via ground shipping or in accordance with federal regulations in place at the time of the return. Axon will pay shipping costs for the return if Agency uses Axon’s RMA process.
4. Extended Warranty. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer’s warranty plus the four- (4-) year extended term.
5. Trade-in. If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Table with 2 columns: Agency Size, Days to Return from Start Date of TASER 7 Subscription. Rows: Less than 100 officers (30 days), 100 to 499 officers (90 days), 500+ officers (180 days).

- 6. TASER 7 Subscription Term. The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 start date.
7. Access Rights. Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not exceed the number of end users the Quote specifies.
8. Privacy. Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.
9. Termination. If payment for TASER 7 is more than thirty (30) days past due, Axon may terminate Agency’s TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:
9.1. TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.



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- 9.2. Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of termination.
- 9.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.





TASER 10 Appendix

This TASER 10 Appendix applies to Agency's TASER 10, OSP 10, OSP Plus, or OSP 10 Plus Premium purchase from Axon, if applicable.

- 1. Duty Cartridge Replenishment Plan. If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. Training. If the Quote includes a training voucher, Agency must use the voucher within one (1) year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
3. Extended Warranty. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer's warranty plus the four- (4-) year extended term.
4. Trade-in. If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Table with 2 columns: Agency Size, Days to Return from Start Date of TASER 10 Subscription. Rows include: Less than 100 officers (60 days), 100 to 499 officers (90 days), 500+ officers (180 days).

- 5. TASER 10 Subscription Term. The TASER 10 Subscription Term for a standalone TASER 10 purchase begins on shipment of the TASER 10 hardware. The TASER 10 Subscription Term for OSP 10 begins on the OSP 10 start date.
6. Access Rights. Upon Axon granting Agency a TASER 10 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 10 CEW devices during the TASER 10 Subscription Term. Agency may not exceed the number of end users the Quote specifies.
7. Agency Warranty. If Agency is located in the US, Agency warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Agency use pursuant to a law enforcement agency transfer under the Gun Control Act of 1968.
8. Purchase Order. To comply with applicable laws and regulations, Agency must provide a purchase order to Axon prior to shipment of TASER 10.



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### Axon Auto-Tagging Appendix

If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
2. **Support.** For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
3. **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
  - 4.1. Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
  - 4.2. Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
  - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
  - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
  - 4.5. Promptly install and implement any software updates provided by Axon;
  - 4.6. Ensure that all appropriate data backups are performed;
  - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
  - 4.8. Provide Axon with remote access to Agency's Axon Evidence account when required;
  - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
  - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.



**Axon Fleet Appendix**

If Axon Fleet is included on the Quote, this Appendix applies.

1. Agency Responsibilities.
  19. Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "**Axon Fleet**") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
  20. Agency is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Agency vehicles. Agency is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates, Failure to make vehicles available may require an equitable adjustment in fees or schedule.
2. **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
3. **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
4. Wireless Offload Server.
  - 4.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
  - 4.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
  - 4.3. **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
  - 4.4. **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
5. Axon Vehicle Software.
  - 5.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
  - 5.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.



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6. **Acceptance Checklist.** If Axon provides services to Agency pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Agency retrieves Agency's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Agency will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.
7. **Axon Fleet Upgrade.** If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.
  - 7.1. If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.
  - 7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
8. **Axon Fleet Termination.** Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:
  - 8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.
  - 8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.
  - 8.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



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**Axon Respond Appendix**

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency. If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.
3. **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.
4. **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.
5. **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
  - 5.1. With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.
6. **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



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**Add-on Services Appendix**

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term.** If Agency purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Agency.
  - 1.1. If Agency purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.
  - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Community Request Storage.** For Axon Community Request, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.

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**Axon Auto-Transcribe Appendix**

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Agency purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Agency. If Agency purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Agency.
  - 1.1. If Agency cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.
2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Agency a set number of minutes, Agency may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Agency will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Agency additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Agency by Axon.
3. **Axon Unlimited Transcribe.** Upon Axon granting Agency an Unlimited Transcribe subscription to Axon Auto-Transcribe, Agency may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.
4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.

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### Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term.** The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Agency related to virtual reality (collectively, "**Virtual Reality Media**").
2. **Headsets.** Agency may purchase additional virtual reality headsets from Axon. In the event Agency decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Agency must purchase those headsets from Axon.
3. **License Restrictions.** All licenses will immediately terminate if Agency does not comply with any term of this Agreement. If Agency utilizes more users than stated in this Agreement, Agency must purchase additional Virtual Reality Media licenses from Axon. Agency may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Agency may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
  - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
  - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
  - 3.4. use trade secret information contained in Virtual Reality Media;
  - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
  - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
  - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy.** Agency's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at <https://www.axon.com/legal/axon-virtual-reality-privacy-policy>.
5. **Termination.** Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement.



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**Axon Evidence Local Software Appendix**

This Appendix applies if Axon Evidence Local is included on the Quote.

1. **License.** Axon owns all executable instructions, images, icons, sound, and text in Axon Evidence Local. All rights are reserved to Axon. Axon grants a non-exclusive, royalty-free, worldwide right and license to use Axon Evidence Local. "Use" means storing, loading, installing, or executing Axon Evidence Local exclusively for data communication with an Axon Device. Agency may use Axon Evidence Local in a networked environment on computers other than the computer it installs Axon Evidence Local on, so long as each execution of Axon Evidence Local is for data communication with an Axon Device. Agency may make copies of Axon Evidence Local for archival purposes only. Axon shall retain all copyright, trademark, and proprietary notices in Axon Evidence Local on all copies or adaptations.
2. **Term.** The Quote will detail the duration of the Axon Evidence Local license, as well as any maintenance. The term will begin upon installation of Axon Evidence Local.
3. **License Restrictions.** All licenses will immediately terminate if Agency does not comply with any term of this Agreement. Agency may not use Axon Evidence Local for any purpose other than as expressly permitted by this Agreement. Agency may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Axon Evidence Local;
  - 3.2. reverse engineer, disassemble, or decompile Axon Evidence Local or apply any process to derive the source code of Axon Evidence Local, or allow others to do the same;
  - 3.3. access or use Axon Evidence Local to avoid incurring fees or exceeding usage limits or quotas;
  - 3.4. copy Axon Evidence Local in whole or part, except as expressly permitted in this Agreement;
  - 3.5. use trade secret information contained in Axon Evidence Local;
  - 3.6. resell, rent, loan or sublicense Axon Evidence Local;
  - 3.7. access Axon Evidence Local to build a competitive device or service or copy any features, functions, or graphics of Axon Evidence Local; or
  - 3.8. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Evidence Local or any copies of Axon Evidence Local.
4. **Support.** Axon may make available updates and error corrections ("**Updates**") to Axon Evidence Local. Axon will provide Updates electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate access to the Internet to receive Updates. Agency is responsible for maintaining the computer equipment necessary to use Axon Evidence Local. Axon may provide technical support of a prior release/version of Axon Evidence Local for six (6) months from when Axon made the subsequent release/version available.
5. **Termination.** Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement. Upon termination, Axon may disable Agency's right to login to Axon Evidence Local.



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## Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services are included on the Quote.

### 1. Definitions.

- 1.1. "**API Client**" means the software that acts as the interface between Agency's computer and the server, which is already developed or to be developed by Agency.
- 1.2. "**API Interface**" means software implemented by Agency to configure Agency's independent API Client Software to operate in conjunction with the API Service for Agency's authorized Use.
- 1.3. "**Axon Evidence Partner API, API or Axon API**" (collectively "**API Service**") means Axon's API which provides a programmatic means to access data in Agency's Axon Evidence account or integrate Agency's Axon Evidence account with other systems.
- 1.4. "**Use**" means any operation on Agency's data enabled by the supported API functionality.

### 2. Purpose and License.

- 2.1. Agency may use API Service and data made available through API Service, in connection with an API Client developed by Agency. Axon may monitor Agency's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Agency agrees to not interfere with such monitoring or obscure from Axon Agency's use of API Service. Agency will not use API Service for commercial use.
- 2.2. Axon grants Agency a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Agency's Use in connection with Agency's API Client.
- 2.3. Axon reserves the right to set limitations on Agency's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

### 3. Configuration. Agency will work independently to configure Agency's API Client with API Service for Agency's applicable Use. Agency will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Agency will inform Axon promptly of any updates. Upon Agency's registration, Axon will provide documentation outlining API Service information.

### 4. Agency Responsibilities. When using API Service, Agency and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

### 5. API Content. All content related to API Service, other than Agency Content or Agency's API Client content, is considered Axon's API Content, including:

- 5.1. the design, structure and naming of API Service fields in all responses and requests;



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- 5.2. the resources available within API Service for which Agency takes actions on, such as evidence, cases, users, or reports;
- 5.3. the structure of and relationship of API Service resources; and
- 5.4. the design of API Service, in any part or as a whole.
6. **Prohibitions on API Content.** Neither Agency nor its end users will use API content returned from the API Interface to:
  - 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
  - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
  - 6.3. misrepresent the source or ownership; or
  - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
7. **API Updates.** Axon may update or modify the API Service from time to time ("**API Update**"). Agency is required to implement and use the most current version of API Service and to make any applicable changes to Agency's API Client required as a result of such API Update. API Updates may adversely affect how Agency's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Agency to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.

**Advanced User Management Appendix**

This Appendix applies if Axon Advanced User Management is included on the Quote.

1. **Scope.** Advanced User Management allows Agency to (a) utilize bulk user creation and management, (b) automate user creation and management through System for Cross-domain Identity Management ("**SCIM**"), and (c) automate group creation and management through SCIM.
2. **Advanced User Management Configuration.** Agency will work independently to configure Agency's Advanced User Management for Agency's applicable Use. Upon request, Axon will provide general guidance to Agency, including documentation that details the setup and configuration process.



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**Axon Channel Services Appendix**

This Appendix applies if Agency purchases Axon Channel Service, as set forth on the Quote.

1. **Definitions.**
  - 1.1. **"Axon Digital Evidence Management System"** means Axon Evidence or Axon Evidence Local, as specified in the attached Channel Services Statement of Work.
  - 1.2. **"Active Channel"** means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.
  - 1.3. **"Inactive Channel"** means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.
2. **Scope.** Agency currently has a third-party system or data repository from which Agency desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Agency's third-party data into an Axon Digital Evidence Management System or the transfer of Agency data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work ("**Channel Services SOW**"). Channel Services will not delete any Agency Content. Agency is responsible for verifying all necessary data is migrated correctly and retained per Agency policy.
3. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Channel Services SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
4. **Purpose and Use.** Agency is responsible for verifying Agency has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Agency is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Agency's network and systems to perform the Services described in the Channel Services SOW. Agency is responsible for facilitating this access per all laws and policies applicable to Agency.
5. **Project Management.** Axon will assign a Project Manager to work closely with Agency's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
6. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.
7. **Monitoring.** Axon may monitor Agency's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure from Axon Agency's use of channel services.
8. **Agency's Responsibilities.** Axon's successful performance of the Channel Services requires Agency:
  - 8.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);
  - 8.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Agency (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Agency premises with laptop personal computers and any other materials needed to perform the Channel Services);
  - 8.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;
  - 8.4. Ensure all appropriate data backups are performed;
  - 8.5. Provide Axon with remote access to the Agency's network and third-party systems when required for Axon to perform the Channel Services;
  - 8.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and
  - 8.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators,



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and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).

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**VIEVU Data Migration Appendix**

This Appendix applies if Agency purchases Migration services, as set forth on the Quote.

1. **Scope.** Agency currently has legacy data in the VIEVU solution from which Agency desires to move to Axon Evidence. Axon will work with Agency to copy legacy data from the VIEVU solution into Axon Evidence ("**Migration**"). Before Migration, Agency and Axon will work together to develop a Statement of Work ("**Migration SOW**") to detail all deliverables and responsibilities. The Migration will require the availability of Agency resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Agency's request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon's resource availability.
  - 1.1. A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Agency. The Migration SOW will provide further detail.
2. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
3. **Project Management.** Axon will assign a Project Manager to work closely with Agency's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
4. **Downtime.** There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Agency is migrating. Axon will work with Agency to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.
5. **Functionality Changes.** Due to device differences between the VIEVU solution and the Axon's Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration.
6. **Acceptance.** Once the Migration is complete, Axon will notify Agency and provide an acceptance form. Agency is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Agency policy. Agency will have ninety (90) days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.
  - 6.1. In the event Agency does not accept the Migration, Agency agrees to notify Axon within a reasonable time. Agency also agrees to allow Axon a reasonable time to resolve any issue. In the event Agency does not provide Axon with a written rejection of the Migration during these ninety (90) days, Agency may be charged for additional monthly storage costs. After Agency provides acceptance of the Migration, Axon will delete all data from the VIEVU solution ninety (90) days after the Migration.
7. **Post-Migration.** After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Agency elects to maintain data within the VIEVU solution, Axon will provide Agency ninety (90) days' notice before ending support for the VIEVU solution.
8. **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.
9. **Monitoring.** Axon may monitor Agency's use of Migration to ensure quality, improve Axon Devices and Services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure Agency's use of Migration from Axon.



Axon Technical Account Manager Appendix

This Appendix applies if Axon Support Engineer services are included on the Quote.

1. Axon Technical Account Manager Payment. Axon will invoice for Axon Technical Account Manager ("TAM") services, as outlined in the Quote, when the TAM commences work on-site at Agency.

2. Full-Time TAM Scope of Services.

- 2.1. A Full-Time TAM will work on-site four (4) days per week, unless an alternate schedule or reporting location is mutually agreed upon by Axon and Customer.
2.2. Agency's Axon sales representative and Axon's Agency Success team will work with Agency to define its support needs and ensure the Full-Time TAM has skills to align with those needs. There may be up to a six- (6-) month waiting period before the Full-Time TAM can work on-site, depending upon Agency's needs and availability of a Full-Time TAM.
2.3. The purchase of Full-Time TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Agency, and Agency is current on all payments for the Full-Time TAM Service.
2.4. The Full-Time TAM Service options are listed below:

Table with 4 rows of service options: Ongoing System Set-up and Configuration, Account Maintenance, Data Analysis, Direct Support, and Agency Advocacy.

3. Regional TAM Scope of Services

- 3.1. A Regional TAM will work on-site for three (3) consecutive days per quarter. Agency must schedule the on-site days at least two (2) weeks in advance. The Regional TAM will also be available by phone and email during regular business hours up to eight (8) hours per week.
3.2. There may be up to a six- (6-) month waiting period before Axon assigns a Regional TAM to Agency, depending upon the availability of a Regional TAM.
3.3. The purchase of Regional TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Agency and Agency is current on all payments for the Regional TAM Service.
3.4. The Regional TAM service options are listed below:



**Account Maintenance**

Conducting remote training on new features and **devices for Agency's leadership**  
Thoroughly documenting issues and workflows and suggesting new **workflows to improve the effectiveness of the Axon program**  
Conducting weekly conference calls to cover **current issues and program status**  
Visiting Agency quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Agency's goals for your Axon program, and continue to ensure a successful deployment of Axon Devices

**Direct Support**

**Providing remote, Tier 1 and Tier 2 (As defined Axon's Service Level Agreement) technical support for Axon Devices**  
Creating and monitoring RMAs remotely

**Data Analysis**

Providing quarterly Axon **usage data to identify trends and program efficiency opportunities**  
Comparing an **Agency's Axon usage and trends to peers to establish best practices**  
Proactively monitoring the health of Axon equipment and coordinating returns when needed

**Agency Advocacy**

Coordinating bi-yearly Voice of **Agency meetings with Device Management team**  
Recording and tracking Agency feature requests and major bugs

4. **Out of Scope Services.** The TAM is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.
5. **TAM Leave Time.** The TAM will be allowed up seven (7) days of sick leave and up to fifteen (15) days of vacation time per each calendar year. The TAM will work with Agency to coordinate any time off and will provide Agency with at least two (2) weeks' notice before utilizing any vacation days.



Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

- License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Agency a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Agency any right to enhancements or updates, but if such are made available to Agency and obtained by Agency they shall become part of the Software and governed by the terms of this Agreement.
- Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Agency agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Agency terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
- Restrictions on Use.** Agency may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Agency may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Agency may not rent, lease, sublicense, grant a security interest in or otherwise transfer Agency's rights to or to use the Software. Any rights not granted are reserved to Axon.
- Term.** For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses—the license shall be perpetual unless Agency fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Agency.
- Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Agency with title or ownership of the Software, but only a right of limited use.
- Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Agency may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Agency. If Agency receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Agency to use the copy of media on an additional server.
- Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Agency agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Agency ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Agency's computer or computer system, Agency agrees not to access such media for the purpose of recovering the Software or online Software Documentation.
- Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.
- U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and agency supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or



## Master Services and Purchasing Agreement for Agency

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.

## My90 Terms of Use Appendix

### Definitions.

- 1.1. **"My90"** means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon products.
- 1.2. **"Recipient Contact Information"** means contact information, as applicable, including phone number or email address (if available) of the individual whom Agency would like to obtain feedback.
- 1.3. **"Agency Data"** means
  - 1.3.1. "My90 Agency Content" which means data, including Recipient Contact Information, provided to My90 directly by Agency or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Agency Content does not include My90 Non-Content Data.
  - 1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Agency's My90 tenant, and client software, users, and survey recipients that is Processed (as defined in Section 1.6 of this Appendix) when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Agency Content.
  - 1.3.3. "Survey Response" which means survey recipients' response to My90 Survey.
- 1.4. **"My90 Data"** means
  - 1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Agency and survey recipients within My90.
  - 1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to, a particular individual.
- 1.5. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
- 1.6. **"Processing"** means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.7. **"Sensitive Personal Data"** means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.
2. **Access.** Upon Axon granting Agency a subscription to My90, Agency may access and use My90 to store and manage My90 Agency Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.
3. **IP address.** Axon will not store survey respondents' IP address.
4. **Agency Owns My90 Agency Content.** Agency controls or owns all right, title, and interest in My90 Agency Content. Except as outlined herein, Axon obtains no interest in My90 Agency Content, and My90 Agency Content is not Axon's business records. Except as set forth in this Agreement, Agency is responsible for uploading, sharing, managing, and deleting My90 Agency Content. Axon will only have access to My90 Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to My90 Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon products.
5. **Details of the Processing.** The nature and purpose of the Processing under this Appendix are further specified

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in Schedule 1 Details of the Processing, to this Appendix.

6. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Agency Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Agency Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Agency, such as ISO 27001 certification or SOC 2 Reporting.
7. **Privacy.** Agency use of My90 is subject to the My90 Privacy Policy, a current version of which is available at <https://www.axon.com/legal/my90privacypolicy>. Agency agrees to allow Axon access to My90 Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon products.
8. **Location of Storage.** Axon may transfer Agency Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Agency Data. For all Agency, Axon will Process and store Agency Data within the United States. Ownership of My90 Agency Content remains with Agency.
9. **Required Disclosures.** Axon will not disclose Agency Data that Agency shares with Axon except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Agency if any disclosure request is received for Agency Data so Agency may file an objection with the court or administrative body, unless prohibited by law.
10. **Data Sharing.** Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:
  - 10.1. Axon may share Agency Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.
  - 10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or reasonably be linked directly or indirectly to a particular individual.
11. **License and Intellectual Property.** Agency grants Axon, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Agency Data for internal use including but not limited to analysis and creation of derivatives. Axon may not release Agency Data to any third party under this right that is not aggregated and de-identified. Agency acknowledges that Agency will have no intellectual property right in any media, good or service developed or improved by Axon. Agency acknowledges that Axon may make any lawful use of My90 Data and any derivative of Agency Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Agency will have no intellectual property right in any good, service, media, or other product that uses My90 Data.
12. **Agency Use of Aggregated Survey Response.** Axon will make available to Agency Aggregated Survey Response and rights to use for any Agency purpose.
13. **Data Subject Rights.** Taking into account the nature of the Processing, Axon shall assist Agency by appropriate technical and organizational measures, insofar as this is reasonable, for the fulfilment of Agency's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Agency Content. If in regard to My90 Agency Content, Axon receives a Data Subject Request from Agency's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within seventy-two (72) hours, to make its request directly to Agency. Agency will be responsible for responding to any such request.
14. **Assistance with Requests Related to My90 Agency Content.** With regard to the processing of My90 Agency Content, Axon shall, if not prohibited by applicable law, notify Agency without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Agency Content; (b) receives a complaint or request from a third party regarding the obligations of Agency or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Agency Content or the Processing or protection of My90 Agency Content. Axon shall not respond to such requests, complaints, or communications, unless Agency has given Axon written instructions to

that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Agency of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

15. **Axon Evidence Partner Sharing.** If Axon Evidence partner sharing is used to share My90 Agency Content, Agency will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Agency acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Agency also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.
16. **Data Retention.** Phone numbers provided to Axon directly by Agency or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for twenty-four (24) hours. Axon will not delete Aggregated Survey Response for four (4) years following termination of this Agreement. There will be no functionality of My90 during these four (4) years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.
17. **Termination.** Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Agency Content or the potential monetization of Survey Response and Aggregated Survey Response.
18. **Managing Data Shared.** Agency is responsible for:
  - 18.1. Ensuring My90 Agency Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;
  - 18.2. Ensuring that only My90 Agency Content that is authorized to be shared for the purposes outlined is shared with Axon. Agency will periodically monitor or audit this shared data;
  - 18.3. Using an appropriately secure data transfer mechanism to provide My90 Agency Content to Axon;
  - 18.4. Immediately notifying Axon if My90 Agency Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Agency Content in the event Agency requests to un-share previously shared My90 Agency Content;
19. **Prior to enrollment in My90.** Prior to enrolling in My90, Agency will:
  - 19.1. determine how to use My90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations;
  - 19.2. develop a set of default qualification criteria of what My90 Agency Content may be shared with Axon; and
  - 19.3. assign responsibilities for managing what My90 Agency Content is shared with Axon and educate users on what data may or not be shared with Axon.
20. **Agency Responsibilities.** Agency is responsible for:
  - 20.1. ensuring no My90 Agency Content or Agency end user's use of My90 Agency Content or My90 violates this Agreement or applicable laws;
  - 20.2. providing, and will continue to provide, all notices and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Agency Data in accordance with this Agreement; and
  - 20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to My90. Agency will also maintain the security of end usernames and passwords and security and access by end users to My90 Agency Content. Agency is responsible for ensuring the configuration and utilization of My90 meets applicable Agency regulations and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or My90 Agency Content or if account information is lost or stolen.
21. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Agency or end user's use of or registration for My90 may (a) pose a security

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risk to Axon products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Agency Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.

**22. My90 Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

- 22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;
- 22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;
- 22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
- 22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;
- 22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;
- 22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or
- 22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

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Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Agency obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:
  - 1.1. Survey Tool where Agency may create, distribute, and analyze feedback from individuals it designates. Agency may designate members of the community, staff or officers from whom they would like to obtain feedback;
  - 1.2. Creation of custom forms for surveys. Agency may select questions from a list of pre-drafted questions or create their own;
  - 1.3. Distribution of survey via multiple distribution channels such as text message;
  - 1.4. Ability to access and analyze Survey Response. Axon may also provide Agency Aggregated Survey Responses which contain analysis and insights from the Survey Response;
  - 1.5. Direct integrations into information systems including Computer Aided Dispatch ("**CAD**"). This will enable Agency to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback, enabling Axon to communicate directly with these individuals;
  - 1.6. Data Dashboard Beta Test ("**Data Dashboard**") where Survey Response and Aggregated Survey Response will be displayed for Agency use. Agency will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Agency to test before they are publicly available;
  - 1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Agency; (2) other Axon Agency; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and
  - 1.8. Provide services and materials to engage Agency stakeholders, market the partnership to the public, and facilitate training.



Miami Springs Police Department  
X2 Tasers as of 10/17/2023

X2900A68X  
X29006E5M  
X2900AMXH  
X290094V1  
X2900AMTM  
X29006EV2  
X2900A62D  
X29007ARP  
X29007C1F  
X29006ER5  
X29007ATK  
X29006EYW  
X2900A50P  
X290092PH  
X29007AWM  
X29007AWM  
X2900A683  
X2900A67K  
X290094V7  
X2900A501  
X29008PCW  
X29004MWE  
X2900A6EP  
X290094VY  
X29006EW8  
X2900AMV0  
X2900AMVC  
X2900AMTF  
X2900AMTT  
X2900CM4D  
X29006E5W  
X2900CM2N  
X2900CKW1  
X290094V0  
X2900CMKK  
X2900A54K  
X29007AWC  
X2900AMT2  
X29006EVR  
X2900AMRP  
X2900AMVX  
X29008PMN  
X2900AMRY  
X290094X2  
X29007AWD  
X290024W2  
X2900AMVA

Miami Springs Police Department  
X2 Tasers as of 10/17/2023

X2900259Y  
X290094V2  
X29008PDE



17800 N 85TH STREET  
SCOTTSDALE, ARIZONA 85255

AXON.COM

**To: United States state, local and municipal law enforcement agencies**

**Re: Sole Source Letter for Axon Enterprise, Inc.'s Axon brand products and Axon Evidence (Evidence.com) Data Management Solutions<sup>1</sup>**

A sole source justification exists because the following goods and services required to satisfy the agency's needs are only manufactured and available for purchase from Axon Enterprise.

### **Axon Digital Evidence Solution Description**

#### **Axon Body 3 Video Camera (DVR)**

- Improved video quality with reduced motion blur and better low-light performance
- Multi-mic audio—four built-in microphones
- Wireless upload option
- Gunshot detection and alerts
- Streaming audio and video capability
- "Find my camera" feature
- Verbal transcription with Axon Records (coming soon)
- End-to-end encryption
- Twelve-hour battery
- Up to 120-second buffering period to record footage before pressing record button

#### **Axon Flex 2 Video Camera**

- Video playback on mobile devices in the field via Bluetooth pairing
- Retina Low Light capability sensitive to less than 0.1 lux
- Audio tones to alert user of usage
- Low SD, high SD, low HD, and high HD resolution (customizable by the agency)
- Up to 120-second buffering period to record footage before pressing record button
- Multiple mounting options using magnetic attachment: head, collar, shoulder, helmet, ball cap, car dash, and Oakley sunglass mounts available
- 120-degree diagonal field of view camera lens, 102-degree horizontal field of view, and 55-degree vertical field of view

#### **Axon Flex 2 Controller**

- 12+ hours of battery operation per shift (even in recording mode)
- LED lights to show current battery level and operating mode
- Haptic notification available
- Tactical beveled button design for use in pocket
- Compatible with Axon Signal technology

#### **Axon Air System**

- Purpose-built solution for law enforcement UAV programs
- Supported applications on iOS and Android

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<sup>1</sup> Axon is also the sole developer and offeror of the Evidence.com data management services. Evidence.com is both a division of Axon and a data management product solution offered by Axon. Evidence.com is not a separate corporate entity.



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SCOTTSDALE, ARIZONA 85255

AXON.COM

- Automated tracking of pilot, aircraft, and flight logs
- Unlimited Storage of UAV data in Axon Evidence (Evidence.com)
- In application ingestion of data in Axon Evidence (Evidence.com)
- Axon Aware integration for live streaming and situational awareness

#### **Axon Body 2 Video Camera**

- Video playback on mobile devices in the field via Bluetooth pairing
- Retina Low Light capability sensitive to less than 1 lux
- Audio tones and haptic (vibration) notification to alert user of usage
- Audio mute during event option
- Wi-Fi capability
- High, medium, and low quality recording available (customizable by the agency)
- Up to 2-minute buffering period to record footage before pressing record button
- Multiple mounting options using holster attachment: shirt, vest, belt, and dash mounts available
- 12+ hours of battery operation per shift (even in recording mode)
- LED lights to show current battery level and operating mode
- 143-degree lens
- Includes Axon Signal technology

#### **Axon Fleet 3 Camera**

- High-definition Dual-View Camera with panoramic field of view, 12x zoom, and AI processing for automatic license plate reader (ALPR)
- High-definition Interior Camera with infrared illumination for back seat view in complete darkness
- Wireless Mic and Charging Base for capturing audio when outside of vehicle
- Fleet Hub with connectivity, global navigation satellite system (GNSS), secure solid-state storage, and Signal inputs
- Automatic transition from Buffering to Event mode with configurable Signals
- Video Recall records last 24 hours of each camera in case camera not activated for an event
- Intuitive mobile data terminal app, Axon Dashboard, for controlling system, reviewing video, quick tagging, and more
- Ability to efficiently categorize, play back and share all video and audio alongside other digital files on Evidence.com
- Multi-cam playback, for reviewing up to four videos, including body-worn and in-car footage, at the same time
- Fully integrated with Evidence.com services and Axon devices
- Automatic time synchronization with all Axon Fleet and other Axon on-officer cameras allows for multi-camera playback on Evidence.com.
- Prioritized upload to Evidence.com of critical event videos via 4G/LTE
- Wireless alerts from the TASER CEW Signal Performance Power Magazine (SPPM) and Signal Side Arm (SSA).
- Best-in-class install times, wireless updates and quick remote troubleshooting
- Optional Axon Aware live stream, alerts, and location updates for situational awareness
- Optional Axon ALPR hotlist alerts, plate read retention, and investigative search



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### **Axon Fleet 2 Camera**

- Fully integrated with Axon Evidence services and Axon devices
- Automatic time synchronization with other Axon Fleet and Axon on-officer cameras allows for multi-camera playback on Axon Evidence.
- Immediate upload to Axon Evidence of critical event videos via 4G/LTE
- Wireless alerts from the TASER CEW Signal Performance Power Magazine (SPPM).
- Automatic transition from BUFFERING to EVENT mode in an emergency vehicle equipped with the Axon Signal Unit
- Decentralized system architecture without a central digital video recorder (DVR).
- Cameras that function independently and communicate wirelessly with the computer in the vehicle (MDT, MDC, MDU) for reviewing, tagging and uploading video.
- Wireless record alert based on Bluetooth communication from Axon Signal Vehicle when a configured input is enabled (e.g. emergency light, siren, weapon rack, etc.).
- Receives alerts from Axon Signal Sidearm.
- Plug-And-Play design allowing for cameras to be easily replaced and upgraded.
- Ability for an unlimited number of agency vehicles recording in the same vicinity with an Axon Fleet system to be automatically associated with one another when reviewing video in the video management platform. This feature is also supported across body cameras.

### **Axon Signal Unit (ASU)**

- Communications device that can be installed in emergency vehicles.
- With emergency vehicle light bar activation, or other activation triggers, the Axon Signal Unit sends a signal. Upon processing the signal, an Axon system equipped with Axon Signal technology transitions from the BUFFERING to EVENT mode.

### **Axon Signal Performance Power Magazine (SPPM)**

- Battery pack for the TASER X2 and X26P conducted electrical weapons
- Shifting the safety switch from the down (SAFE) to the up (ARMED) positions sends a signal from the SPPM. Upon processing the signal, an Axon system equipped with Axon Signal technology transitions from the BUFFERING to EVENT mode. Axon Signal technology only works with Axon cameras.

### **Axon Signal Sidearm Sensor**

- Can be installed on common duty holsters
- Drawing a service handgun from the holster sends a signal from the Axon Signal Sidearm sensor. Upon processing the signal, an Axon system equipped with Axon Signal technology transitions from the BUFFERING to EVENT mode.

### **Axon Interview Solution**

- High-definition cameras and microphones for interview rooms
- Covert or overt camera installations
- Touch-screen user interface
- Motion-based activation
- Up to 7-minute pre- and post-event buffering period
- Full hardware and software integration
- Upload to Axon Evidence services
- Interview room files can be managed under the same case umbrella as files from Axon on-officer cameras and Axon Fleet cameras; i.e., Axon video of an arrest and



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- interview room video are managed as part of the same case in Axon Evidence
- Dual integration of on-officer camera and interview room camera with Axon Evidence digital evidence solution

#### **Axon Signal Technology**

- Sends a broadcast of status that compatible devices recognize when certain status changes are detected
- Only compatible with TASER and Axon products

#### **Axon Dock**

- Automated docking station uploads to Axon Evidence services through Internet connection
- No computer necessary for secure upload to Axon Evidence
- Charges and uploads simultaneously
- The Axon Dock is tested and certified by TUV Rheinland to be in compliance with UL 60950-1: 2007 R10.14 and CAN/ CSA-C22.2 NO.60950-I-07+AI:2011+A2:2014 Information Technology Equipment safety standards.

#### **Axon Evidence Data Management System**

- Software as a Service (SaaS) delivery model that allows agencies to manage and share digital evidence without local storage infrastructure or software needed
- SaaS model reduces security and administration by local IT staff: no local installation required
- Automatic, timely security upgrades and enhancements deployed to application without the need for any local IT staff involvement
- Securely share digital evidence with other agencies or prosecutors without creating copies or requiring the data to leave your agency's domain of control
- Controlled access to evidence based on pre-defined roles and permissions and pre-defined individuals
- Password authentication includes customizable security parameters: customizable password complexity, IP-based access restrictions, and multi-factor authentication support
- Automated category-based evidence retention policies assists with efficient database management
- Ability to recover deleted evidence within seven days of deletion
- Stores and supports all major digital file types: .mpeg, .doc, .pdf, .jpeg, etc.
- Requires NO proprietary file formats
- Ability to upload files directly from the computer to Axon Evidence via an Internet browser
- Data Security: Robust Transport Layer Security (TLS) implementation for data in transit and 256-bit AES encryption for data in storage
- Security Testing: Independent security firms perform in-depth security and penetration testing
- Reliability: Fault- and disaster-tolerant infrastructure in at least 4 redundant data centers in both the East and West regions of the United States
- Chain-of-Custody: Audit logs automatically track all system and user activity. These logs cannot be edited or deleted, even by account administrators and IT staff
- Protection: With no on-site application, critical evidence stored in Axon Evidence is protected from local malware that may penetrate agency infrastructure



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- **Stability:** Axon Enterprise is a publicly traded company with stable finances and funding, reducing concerns of loss of application support or commercial viability
- Application and data protected by a CJIS and ISO 27001 compliant information security program
- Dedicated information security department that protects Axon Evidence and data with security monitoring, centralized event log analysis and correlation, advanced threat and intrusion protection, and incident response capabilities
- Redact videos easily within the system, create tags, markers and clips, search 7 fields in addition to 5 category-based fields, create cases for multiple evidence files

#### **Axon Evidence for Prosecutors**

- All the benefits of the standard Axon Evidence services
- Ability to share information during the discovery process
- Standard licenses available for free to prosecutors working with agencies already using Axon Evidence services
- Unlimited storage for data collected by Axon cameras and Axon Capture

#### **Axon Capture Application**

- Free app for iOS and Android mobile devices
- Allows users to capture videos, audio recordings, and photos and upload these files to their Axon Evidence account from the field
- Allows adding metadata to these files, such as: Category, Title, Case ID, and GPS data

#### **Axon Commander Services**

- On-premises data management platform
- Chain of custody reports with extensive audit trail
- Automated workflows, access control, storage, and retention
- Compatible with multiple file formats

#### **Axon View Application**

- Free app for iOS and Android mobile devices
- Allows user to view the camera feed from a paired Axon Body, Axon Body 2, Axon Flex, or Axon Flex 2 camera in real-time
- Allows for playback of videos stored on a paired Axon Body, Axon Body 2, Axon Flex, or Axon Flex 2 system
- Allows adding meta-data to videos, such as: Category, Title, Case ID, and GPS data

#### **Axon Records**

- Continuously improving automated report writing by leveraging AI and ML on officer recorded video, photo, and audio from BWC, In-Car, Mobile App (Axon Capture), or other digital media
- Collaborative report writing through instantly synced workspaces allowing officers to delegate information gathering on scene
- Instant access to records allowing detectives to begin their investigation and records clerks to update information exchanges on things like missing people or stolen property as soon as possible
- Complete leveraging of Axon Evidence sharing to allow fast, efficient, digital, and secure sharing of records and cases to DAs and Prosecutors



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- Robust API and SDK allows data to be easily ingested and pushed out to other systems—preventing data silos
- Deep integration with Axon Evidence putting video at the heart of the record and automating the process of tagging and categorizing digital evidence stored in Axon Evidence
- Automatic association of digital evidence to the record and incident through Axon Evidence integration
- In context search of master indexes (people, vehicles, locations, charges)—promoting efficient report writing through prefilling of existing data which promotes clean and deduped data in the system
- Quick views for users to track calls for service and reports in draft, ready for review, kicked back for further information, or submitted to Records for archiving.
- Federal and State IBRS fields are captured and validated—ensuring the officer knows what fields to fill and what information needs to be captured
- Intuitive validation ensures officers know what information to submit without being burdened by understanding the mapping of NIBRS to state or local crime codes
- Ability to create custom forms and add custom fields to incident reports—allowing your agency to gather the information you find valuable
- Software as a Service (SaaS) delivery model that allows agencies to write, manage, and share digital incident reports without local storage infrastructure or software needed
- SaaS model reduces security and administration by local IT staff: no local installation required
- Automatic, timely security upgrades and enhancements deployed to application without the need for any local IT staff involvement
- Securely share records and cases with other agencies or prosecutors without creating copies or requiring the data to leave your agency's domain of control
- Controlled access based on pre-defined users, groups, and permissions
- Password authentication includes customizable security parameters: customizable password complexity, IP-based access restrictions, and multi-factor authentication support
- Security Testing: Independent security firms perform in-depth security and penetration testing
- Reliability: Fault- and disaster-tolerant infrastructure in at least 4 redundant data centers in both the East and West regions of the United States
- Chain-of-Custody: Audit logs automatically track all system and user activity. These logs cannot be edited or deleted, even by account administrators and IT staff

#### **Axon Standards**

- Internal affairs and professional standards reporting
- Customizable information display, including custom forms
- Customizable workflows and user groups
- Automated alerts
- Compatible with digital documents, photos, and videos
- Connection with Transcription (beta)
- Shared Index with evidence.com and Records
- Data Warehouse allowing custom summary reports and integration into 3rd party analytic tools.





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- Workflow analytics to provide SLA on throughputs
- Integration with the TASER 7 CEW for automatically pulling firing logs (alpha)
- Available as an option for Axon Records
- Automatically bundled with Officer Safety Plan 7+

#### **Axon Professional Services**

- Dedicated implementation team
- Project management and deployment best practices aid
- Training and train-the-trainer sessions
- Integration services with other systems

#### **Axon Auto-Transcribe**

- Transcribes audio to text, producing a time-synchronized transcript of incidents
- Allows searches for keywords (e.g., names, and addresses)
- Embedded time stamps when critical details were said and events occurred
- Produce transcripts in substantially less time than with manual methods
- Pull direct quotes and witness statements directly into reports

#### **Axon Support Engineer:**

- Dedicated Axon Regional/Resident Support Engineer Services
- Quarterly onsite visits
- Solution and Process Guidance custom to your agency
- White-Glove RMA and TAP (if applicable) Service for devices
- Monthly Product Usage Analysis
- Resident Support Engineer also includes onsite product maintenance, troubleshooting, and beta testing assistance

#### **Axon Respond for Dispatch (CAD)**

- Integration with Axon Respond for Devices (Axon Body 3) for location and/or live streaming in CAD.
- Integration with TASER 7 CEW devices for enhanced situational awareness.
- Native ESRI based mapping with ability to connect to ESRI online communities and your agency's local ArcGIS data.
- SaaS model reduces security and administration by local IT staff: no local installation
- Robust API and SDK allows data to be easily ingested and pushed out to other systems -- preventing data silos.
- Complete leveraging of Axon Evidence (evidence.com) sharing to allow fast, efficient, digital and secure sharing of data to DAs and Prosecutors.
- Future versions/enhancements included with minimal down time and no need to purchase an upgrade to the latest version.
- Native integration with Axon Records.
- Reliability: Fault – and disaster – tolerant infrastructure in at least four redundant data centers in both the East and West regions of the United States.
- Security Testing: Independent security firms perform in depth security and penetration testing.
- Automatic, timely security upgrades and enhancements deployed to application without the need for any local IT staff involvement.



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### **Axon Customer Support**

- Online and email-based support available 24/7
- Human phone-based support available Monday–Friday 7:00 AM–5:00 PM MST; support is located in Scottsdale, AZ, USA
- Library of webinars available 24/7
- Remote-location troubleshooting



### **Axon Brand Model Numbers**

1. Axon Body 3 Camera Model: 73202
2. Axon Flex 2 Cameras:
  - Axon Flex 2 Camera (online) Model: 11528
  - Axon Flex 2 Camera (offline) Model: 11529
3. Axon Flex 2 Controller Model: 11532
4. Axon Flex 2 USB Sync Cable Model: 11534
5. Axon Flex 2 Coiled Cable, Straight to Right Angle, 48" (1.2 m)
6. Axon Flex 2 Camera Mounts:
  - Oakley Flak Jacket Kit Model: 11544
  - Collar Mount Model: 11545
  - Oakley Clip Model: 11554
  - Epaulette Mount Model: 11546
  - Ballcap Mount Model: 11547
  - Ballistic Vest Mount Model: 11555
7. Universal Helmet Mount Model: 11548
8. Axon Air System with Axon Evidence (Evidence.com) 5-Year License Model: 12332
9. Axon Body 2 Camera Model: 74001
10. Axon Body 2 Camera Mounts:
  - Axon RapidLock Velcro Mount Model: 74054
11. Axon Flex 2 Controller and Axon Body 2 Camera Mounts:
  - Z-Bracket, Men's, Axon RapidLock Model: 74018
  - Z-Bracket, Women's Axon RapidLock Model: 74019
  - Magnet, Flexible, Axon RapidLock Model: 74020
  - Magnet, Outerwear, Axon RapidLock Model: 74021
  - Small Pocket, 4" (10.1 cm), Axon RapidLock Model: 74022
  - Large Pocket, 6" (15.2 cm), Axon RapidLock Model: 74023



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- MOLLE Mount, Single, Axon RapidLock Model: 11507
- MOLLE Mount, Double, Axon RapidLock Model: 11508
- Belt Clip Mount, Axon RapidLock Model: 11509

12. Axon Fleet Camera

- Axon Fleet 2 Front Camera: 71079
- Axon Fleet 2 Front Camera Mount: 71080
- Axon Fleet 2 Rear Camera: 71081
- Axon Fleet 2 Rear Camera Controller: 71082
- Axon Fleet 2 Rear Camera Controller Mount: 71083
- Axon Fleet Battery System: 74024
- Axon Fleet Bluetooth Dongle: 74027

13. Axon Signal Unit Model: 70112

14. Axon Dock Models:

- Axon Dock – Individual Bay and Core for Axon Flex 2
- Axon Dock – 6-Bay and Core for Axon Flex 2
- Individual Bay for Axon Flex 2 Model: 11538
- Core (compatible with all Individual Bays and 6-Bays) Model: 70027
- Wall Mount Bracket Assembly for Axon Dock: 70033
- Axon Dock – Individual Bay and Core for Axon Body 2 and Axon Fleet Model 74009
- Axon Dock – 6-Bay and Core for Axon Body 2 and Axon Fleet Model 74008
- Individual Bay for Axon Body 2 and Axon Fleet Model: 74011

15. Axon Signal Performance Power Magazine (SPPM) Model: 70116

**Axon Product Packages**

1. Officer Safety Plan: includes a CEW, Axon camera and Dock upgrade, and Axon Evidence license and storage. See your Sales Representative for further details and Model numbers.
2. TASER Assurance Plan (TAP): Hardware extended coverage, Spare Products (for Axon cameras), and Upgrade Models, for the Axon Flex camera and controller, Axon Body camera, and Axon Dock. (The TAP is available only through Axon Enterprise, Inc.)

SOLE AUTHORIZED DISTRIBUTOR FOR AXON BRAND PRODUCTS	SOLE AUTHORIZED REPAIR FACILITY FOR AXON BRAND PRODUCTS
<p style="text-align: center;"><b>Axon Enterprise, Inc.</b>  <b>17800 N. 85<sup>th</sup> Street, Scottsdale, AZ 85255</b>  <b>Phone: 480-905-2000 or 800-978-2737</b>  <b>Fax: 480-991-0791</b></p>	<p style="text-align: center;"><b>Axon Enterprise, Inc.</b>  <b>17800 N. 85<sup>th</sup> Street, Scottsdale, AZ 85255</b>  <b>Phone: 480-905-2000 or 800-978-2737</b>  <b>Fax: 480-991-0791</b></p>

Please contact your local Axon sales representative or call us at 1-800-978-2737 with any questions.

Sincerely,



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A handwritten signature in black ink, appearing to read 'Josh Isner'.

Josh Isner  
Chief Revenue Officer  
Axon Enterprise, Inc.

Android is a trademark of Google, Inc., Bluetooth is a trademark of the Bluetooth SIG, Flak Jacket is a trademark of Oakley, Inc, iPod Touch is a trademark of Apple Inc, iOS is a trademark of Cisco, LTE is a trademark of the European Telecommunications Standards Institute, Shoei is a trademark of Shoei Co., Ltd., VELCRO is a trademark of Velcro Industries, B.V., and Wi-Fi is a trademark of the Wi-Fi Alliance.

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# AGENDA MEMORANDUM

**Meeting Date:** October 23, 2023

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** J.C. Jimenez, City Manager

**From:** *Armando Guzman* / 10/10/23  
Armando Guzman, Chief of Police

**Subject:** New Patrol Vehicle Purchase for FY 23/24

**Recommendation:** Recommendation by the Police Department that Council authorize the issuance of a Purchase Order to Garber Fleet Sales, utilizing Florida Sheriffs Association Contract FSA22-VEL 31.0 with a contract term expiration date of September 30, 2024, in the amount of \$46,792.00 for one (1) 2023 Dodge Charger Police RWD V8, as these funds are available in the FY23/24 Budget, pursuant to Section §31-11 (E)(5) of the City Code.

**Discussion/Analysis:** The purchase of one (1) new 2023 Dodge Charger Police RWD V8 for the Police Department Fleet will allow for the replacement of Unit# 681, a 2014 dodge charger (vin#2C3CDXAG8EH205952), which was declared a total loss as a result of an accident that occurred on September 4<sup>th</sup>, 2023. See attached documentation: Garber Fleet Sales' Quote Sheet and Florida Sheriffs Association Pursuit, Administrative, & Other Vehicles Contracts.

**Submission Date and Time:** 10/10/2023 8:31 AM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
<p><b>Department:</b> <u>Police Department</u></p> <p><b>Prepared by:</b> <u>Ariadna Quintana</u></p> <p><b>Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Budgeted/Funded</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><b>Dept. Head</b> <i>Armando Guzman</i> / 10/10/23</p> <p><b>Procurement:</b> _____</p> <p><b>Asst. City Mgr.:</b> _____</p> <p><b>City Manager:</b> <i>J.C. Jimenez</i></p>	<p><b>Dept./ Desc.:</b> <u>Police Vehicles</u></p> <p><b>Account No.:</b> <u>001-2001-521.65-00</u></p> <p><b>Additional Funding:</b> <u>N/A</u></p> <p><b>Amount previously approved:</b> \$ _____</p> <p><b>Current request:</b> \$ <u>46,792.00</u></p> <p><b>Total vendor amount:</b> \$ <u>46,792.00</u></p>

**RESOLUTION NO. 2023-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING THE PURCHASE OF ONE 2023 DODGE CHARGER POLICE RWD V8 VEHICLE FROM GARBER FORD, INC. IN AN AMOUNT NOT TO EXCEED \$46,792.00 UTILIZING THE TERMS AND CONDITIONS OF THE FLORIDA SHERIFFS ASSOCIATION CONTRACT NO. FSA23-VEL 31.0 PURSUANT TO SECTION 31-11(E)(5) OF THE CITY CODE; DECLARING CERTAIN VEHICLES AS SURPLUS PROPERTY; AUTHORIZING THE SALE OR DISPOSITION OF SURPLUS PROPERTY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the “City”) desires to purchase one 2023 Dodge Charger Police RWD V8 Vehicle (the “Vehicle”) to replace a vehicle that has reached the end of its useful lifecycle and to facilitate the provision of the Police Department’s day-to-day operations; and

**WHEREAS**, the type of purchase contemplated by the City has been competitively bid by the Florida Sheriffs Association, which has entered into Contract No. FSA23-VEL31.0 (the “FSA Contract”) with Garber Ford, Inc. (the “Vendor”), which local governments statewide may utilize for their own benefit; and

**WHEREAS**, in accordance with Section 31-11(E)(5) of the City’s Code of Ordinances, the City Council seeks to approve the purchase of the Vehicle from the Vendor in an amount not to exceed \$46,792.00 consistent with the FSA Contract and the Vendor’s quote, attached hereto as Exhibit “A” (the “Quote”), as the pricing offered pursuant to the FSA Contract is in the City’s best interest; and

**WHEREAS**, the City Council declares the vehicle listed on Exhibit “B” attached hereto (the “Surplus Vehicle”) as surplus property as the Surplus Vehicle has become obsolete, has outlived its usefulness, has become inadequate for the public purposes for which it was intended, or is no longer needed for public purposes in light of the purchase authorized by this Resolution, and authorizes the City Manager to sell or otherwise dispose of the Surplus Vehicle; and

WHEREAS, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

Section 2. Approval. That pursuant to Section 31-11(E)(5) of the City Code, the City Council hereby approves of the purchase of the Vehicle from the Vendor and the expenditure of budgeted funds in an amount not to exceed \$46,792.00, consistent with the FSA Contract and the Vendor's Quote attached hereto as Exhibit "A".

Section 3. Declaration of Surplus Property. That the Surplus Vehicle has become obsolete, has outlived its usefulness, has become inadequate for the public purposes for which it was intended, or is no longer needed for public purposes. Accordingly, the City Council declares the Surplus Vehicle listed on Exhibit "B" attached hereto to be surplus personal property of the City.

Section 4. Authorizing Sale or Disposition of Surplus Property. That the City Manager is hereby authorized to sell or dispose of the Surplus Vehicle by public auction or other procedure determined by the City Manager to be in the best interests of the City. Any surplus property items acquired by the City pursuant to governmental grant programs shall only be disposed of in accordance with procedures and criteria applicable to such grant programs.

Section 5. Implementation. That the City Manager is authorized to execute any purchase order or required documentation for the purchases described in this Resolution, subject to approval by the City Attorney as to form and legality, and to take any action that is reasonably necessary to implement the purpose of this Resolution.

Section 6. Effective Date. That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Jacky Bravo \_\_\_\_\_
Councilmember Dr. Walter Fajet, Ph.D. \_\_\_\_\_

Councilmember Jorge Santin \_\_\_\_\_  
Councilmember Dr. Victor Vazquez, Ph.D. \_\_\_\_\_  
Mayor Maria Puente Mitchell \_\_\_\_\_

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY





**Miami Springs Police Dept.**

Specification #	222
Unit Description	LDDE48

Prepared for: \_\_\_\_\_ Prepared by: \_\_\_\_\_

**10/5/2023**  
 Miami Springs Police Dept.  
 Attn: Albert Sandoval  
[asandoval@mspd.us](mailto:asandoval@mspd.us)  
 305-888-9711  
**Stock - 57723145**

**Garber Chrysler Dodge Truck**  
 Dan Drake  
 (904) 264-2442 ext.2332 FAX: (904) 284-0054  
 3408 Hwy 17 Green Cove Springs Fl, 32043  
[ddrake@garberautomall.com](mailto:d Drake@garberautomall.com)

**Florida Sheriffs Association**

Prices are published by the Florida Sheriffs Association ([www.flsheriffs.org](http://www.flsheriffs.org))  
 Purchasing contract number is FSA22-VEL30.0 Pursuit, Administrative & Other Vehicles, If you have any questions regarding this quote please call!

Base Price - South Zone

LDDE48 **2023 Dodge Charger Police RWD V8** \$36,094.00

Codes	Optional Equipment	Unit Price		Net Price
26A	Quick Order Package 26A	Included		\$0.00
EZH	Engine: 5.7L V8 HEMI MDS VVT	Included		\$0.00
DFK	Transmission: 8-Speed Automatic (8HP70)	Included		\$0.00
PW7	White Knuckle Clearcoat	Included		\$0.00
X5X9	Black, Heavy Duty Cloth Bucket Seats w/Vinyl Rear	134		\$134.00
AYJ	Max Flow Package -inc: Lower Grille Texture - Police	169		\$169.00
TYL	Tires: 245/55R18 BSW Performance	199		\$199.00
LNF/LNX	Black Left Spot Lamp; LED Spot Lamps	Included		\$0.00
CW6	Deactivate Rear Doors/Windows	84		\$84.00
GXQ	Additional Non-Key Alike Fobs -inc: 6 additional key fobs	Included		\$0.00
LSA	Security Alarm	164		\$164.00
<b>Non-OEM Options:</b>			<b>Hours:</b>	
FMLB-LED	Federal Signal LED Allegiant Dual Color Lightbar Package (Red/Blue) -inc.: Includes Full Flood Front and Amber Rear Traffic Patterns PF200 Pathfinder Programmable Light/Siren Controller with PA 100-watt Siren Speaker with Bracket	2465	4.0	\$2,465.00
EXPMOD24	24-Channel Expansion Module for Pathfinder Controller	255		\$255.00
QBD-6	6' OBD Vehicle Interface Cable for use with Pathfinder Controller	130		\$130.00
DUO-LED	Surface Mount Dual Color Super LED Lightheads for Grille (x2 R/B)	346	1.0	\$346.00
DLX-LED	12-Head Dual Color Super LED Lightheads for Rear Side Windows (x2 R/B)	376	1.0	\$376.00
DUO-LED	Surface Mount Dual Color Super LED Lightheads for Rear Tag Sides (x2 R/B) Includes Programming for Extra Brake Light Visibility	346	1.0	\$346.00
HL	Connect Factory HL Flasher to Pathfinder Controller		0.5	
TL	Federal Hardwire Taillight Flasher Module	96	0.5	\$96.00
CONS	Police Center Console with Cupholders and Armrest	696		\$696.00
C-MCB	Console Mic Clip Bracket	16		\$16.00
C-LP3-BL2	Console Bracket with (3) 12-Volt Plugs and (2) Switch Blanks	68		\$68.00
C-AP-0325-1	Console 3" Accessory Pocket, 2.5" Deep	46		\$46.00
COMP	Computer Stand for Front Seat Area; Includes Universal Laptop Tray	796		\$796.00
FP1212	Front Prisoner Partition with Sliding Window with Metal Screen	1096	1.0	\$1,096.00
PSEAT	Full Transport Replacement Seat with Center Pull Seatbelts	846	1.0	\$846.00
SWB	Steel Window Bars for Rear Door Windows (Pair)	290		\$290.00
SGL-P	Single Electric Gun Lock - Partition Mount	386		\$386.00
INST	10.0 Hours EVT Certified Installation Labor (@ \$125/hr)	1250		\$1,250.00
VVS	In-Channel Vent Visors	149		\$149.00
TINT	Tint All Windows to 20% Match with Windshield Strip	295		\$295.00
DEL	Delivery	Included		\$0.00

**TOTAL PURCHASE AMOUNT PER VEHICLE \$ 46,792.00**

**EXHIBIT "B"**  
**SURPLUS VEHICLE**

663	2012	Dodge Cahrger	4D	White	Uniform	2C3DXAG1CH283017
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# AGENDA MEMORANDUM

**Meeting Date:** October 23, 2023

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** J.C. Jimenez, City Manager

**From:** Aeemed Jaime, Procurement Specialist

**Subject:** Recommendation to approve and enter into a Professional Services Agreement with AE Engineering Inc., via RFQ 06-22/23 for Construction Engineering and Inspection (CEI) Services for the Oakwood Drive and East Drive Stormwater and Roadway Improvements Project.

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**RECOMMENDATION:** Recommendation that Council approve the selection of AE Engineering, Inc. for the provision of Construction Engineering and Inspection (CEI) Services for the Oakwood Drive and East Drive Stormwater and Roadway Improvement Project pursuant to Request for Qualifications No. 06-22/23 and authorize the City Manager to enter into an agreement with AE Engineering, Inc. relating to the same in an amount not to exceed \$569,547.00.

**DISCUSSION:** On May 4, 2023, the City advertised in the Daily Business Review, on our City's website, and also on Demand Star (Onvia) RFQ No. 06-22/23 (the "RFQ") for CEI Services (the "Services") for the Oakwood Drive and East Drive Stormwater and Roadway Improvement Project (the "Project"). The City notified 331 firms via DemandStar and 12 firms via email of the opportunity to respond and 22 firms downloaded the RFQ from DemandStar. On May 9, 2023, seven individuals attended a Mandatory Pre-Bid conference and on May 24, 2023, the City received six responses to the RFQ.

On June 6, 2023, the City held a Selection Committee evaluation meeting. During this meeting, responses were reviewed and evaluated by a Selection Committee comprised of Juan D. Garcia, Deputy City Clerk with the City of Miami Springs; Jose L. Lopez, Sr. Associate-Director of Environmental Engineering; and Lizette Fuentes, Assistant Public Works Director. The Selection Committee ranked the six firms that responded to the RFQ. Out of these, three (3) firms were short-listed based on the evaluation criteria. The committee deemed it suitable to exercise their right to request presentations from the highest-ranked firms in the City's best interest. Presentations were held on June 13, 2023, and AE Engineering, Inc. was considered the highest-ranked and most qualified respondent, with Gannett Fleming, Inc. and R.J. Behar & Company, Inc. as the second and third-ranked firms, respectively.

On September 20, 2023, the City Selection Committee, together with the Town's Consultant, Bermello, Ajamil & Partners, Inc., met with AE Engineering, Inc. and negotiated an hourly fee schedule and an Agreement for the provision of the Services for the Project in an amount not to exceed \$569,547.

Funding for the Project will be partially funded utilizing American Rescue Plan Act (ARPA) grant funds.

**Submission Date and Time: 10/18/2023 8:31 AM**

<b><u>Submitted by:</u></b>	<b><u>Approved by (sign as applicable):</u></b>	<b><u>Funding:</u></b>
<b>Department:</b> <u>Procurement Department</u>	<b>Dept. Head:</b> _____	<b>Dept./ Desc.:</b> <u>City Manager's Office</u>
<b>Prepared by:</b> <u>Aeemed Jaime</u>	<b>Procurement:</b> _____	<b>Account No.:</b> _____
<b>Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Asst. City Mgr.:</b> _____	<b>Additional Funding:</b> _____
<b>Budgeted/Funded</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>City Manager:</b> _____	<b>Amount previously approved:</b> \$ _____
		<b>Current request:</b> \$ <u>569,547</u>
		<b>Total vendor amount:</b> \$ <u>569,547</u>

**RESOLUTION NO. 2023-\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING THE SELECTION OF AE ENGINEERING, INC. FOR CONSTRUCTION ENGINEERING AND INSPECTION (CEI) SERVICES FOR THE OAKWOOD DRIVE AND EAST DRIVE STORMWATER AND ROADWAY IMPROVEMENT PROJECT PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 06-22/23; AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE CONSULTANT RELATING TO THE SAME IN AN AMOUNT NOT TO EXCEED \$569,547; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the “City”) issued Request for Qualifications No. 06-22/23 (the “RFQ”) for construction engineering and inspection (CEI) services (the “Services”) for the Oakwood Drive and East Drive Stormwater and Roadway Improvement Project (the “Project”); and

**WHEREAS**, six responses were received by the RFQ deadline; and

**WHEREAS**, on June 6, 2023, the City Selection Committee appointed by the City Manager short listed the top three respondents; and

**WHEREAS**, on June 13, 2023, the City Selection Committee requested oral presentations from the top three respondents and ranked AE Engineering, Inc. (the “Consultant”) as the most qualified firm for the Services, with Gannett Fleming, Inc. and R.J. Behar & Company, Inc. as the second and third-ranked firms, respectively; and

**WHEREAS**, City Selection Committee has negotiated the agreement (the “Agreement”) attached hereto as Exhibit “A” with the Consultant to provide the Services for the Project in an amount not to exceed \$569,547; and

**WHEREAS**, the City Council desires to approve the selection of the Consultant to provide the Services for the Project pursuant to the RFQ and authorize the City Manager to execute the Agreement with the Consultant in substantially the form attached hereto as Exhibit “A” in an amount not to exceed \$569,547; and

**WHEREAS**, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL**

**OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Approval.** That the City Council hereby approves the selection of the Consultant for the provision of the Services for the Project pursuant to the RFQ.

**Section 3. Authorization.** That the City Council hereby authorizes the City Manager to execute the Agreement with the Consultant in substantially the form attached hereto as Exhibit "A" in an amount not to exceed \$569,547, subject to the final approval of the City Attorney as to form, content, and legal sufficiency.

**Section 4. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Jacky Bravo	_____
Councilmember Dr. Walter Fajet, Ph.D.	_____
Councilmember Jorge Santin	_____
Councilmember Dr. Victor Vazquez, Ph.D.	_____
Mayor Maria Puente Mitchell	_____

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK



**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**CITY OF MIAMI SPRINGS**

**AND**

**AE ENGINEERING, INC.**

**THIS AGREEMENT** (this "Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the "City") and **AE ENGINEERING, INC.**, a Florida for-profit corporation (hereinafter, the "Consultant").

**WHEREAS**, the City desires certain construction engineering and inspection (CEI) services (the "Services"), as set forth in greater detail in the Scope of Services attached hereto as Exhibit "A," for the Oakwood Drive and East Drive Stormwater and Roadway Improvement Project (the "Project"); and

**WHEREAS**, the City of Miami Springs (the "City") issued Request for Qualifications No. 06-22/23 (the "RFQ") to obtain the Services for the Project; and

**WHEREAS**, the Consultant submitted a response to the RFQ to perform the Services on behalf of the City, all as further set forth in the Proposal attached hereto as Exhibit "B"; and

**WHEREAS**, on October, 25 2023, the City Commission adopted Resolution No. 2023-XX selected the Consultant to perform the Services for the Project; and

**WHEREAS**, the City will utilize funds awarded by the Florida Department of Environmental Protection (the "Department") for the Project pursuant to the Grant Agreements Nos. C2206 and LPA0192 attached hereto as Exhibits "C" and "D," respectively; and

**WHEREAS**, the City and Consultant, through mutual negotiation, have agreed upon a fee for the Services, which is set forth in the rate schedule attached hereto as Exhibit "E"; and

**WHEREAS**, the City desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the City and the Consultant agree as follows:

**1. Scope of Services.**

**1.1.** Consultant shall provide the Services for the Project as set forth in the Scope of Services attached hereto as Exhibit "A" and in accordance with the Proposal attached hereto as Exhibit "B," which Exhibits are incorporated herein by reference.



1.2. Consultant shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables") to the City.

**2. Term/Commencement Date.**

2.1. The term of this Agreement shall be from the Effective Date through June 30, 2025, thereafter, unless earlier terminated in accordance with Paragraph 8.

2.2. Consultant agrees that time is of the essence and Consultant shall complete the Services within the term of this Agreement, unless extended by the City Manager.

**3. Compensation and Payment.**

3.1. Compensation for the Services provided by Consultant shall be in accordance with the Rate Schedule attached hereto as Exhibit "D." Total compensation under this Agreement shall be in an amount not to exceed \$569,547.00.

3.2. Consultant shall deliver an invoice to City no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the percentage of work completed for each task invoiced. The City shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the City Manager.

**4. Subconsultants.**

4.1. The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Services.

4.2. Consultant may only utilize the services of a particular subconsultant with the prior written approval of the City Manager, which approval may be granted or withheld in the City Manager's sole and absolute discretion.

**5. City's Responsibilities.**

5.1. City shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the City, and provide criteria requested by Consultant to assist Consultant in performing the Services.

5.2. Upon Consultant's request, City shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

**6. Consultant's Responsibilities; Representations and Warranties.**

- 6.1.** The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to City requests, the Consultant shall at Consultant's sole expense, immediately correct its Deliverables or Services.
- 6.2.** The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for City as an independent contractor of the City. Consultant further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.
- 6.3.** The Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

## **7. Conflict of Interest.**

- 7.1.** To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the City.

## **8. Termination.**

- 8.1.** The City Manager, without cause, may terminate this Agreement upon five (5) calendar days' written notice to the Consultant, or immediately with cause.
- 8.2.** Upon receipt of the City's written notice of termination, Consultant shall immediately stop work on the project unless directed otherwise by the City Manager.
- 8.3.** In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.
- 8.4.** The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the City, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

## 9. Insurance.

9.1. Consultant shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to City, naming the City and the Department as Additional Insureds, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents, and volunteers and the Department, its officials, employees, agents, and volunteers, naming the City and the Department as additional insureds. Any insurance maintained by the City and/or by the Department shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the City as it deems necessary or prudent.

9.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

9.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Consultant must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

9.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.1.4. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit. If Professional Liability Insurance is required, the City shall select this box: .

**9.2. Certificate of Insurance.** Certificates of Insurance shall be provided to the City, reflecting the City and the Department as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by City and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to City prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the City. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The City reserves the right to inspect and return a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City.

**9.3. Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the City and the Department are to be specifically included as Additional Insureds for the liability of the City and Department resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the City and the Department as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City and/or the Department shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

**9.4. Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the City. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**9.5.** The provisions of this section shall survive termination of this Agreement.

**10. Nondiscrimination.** During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color,

religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

**11. Attorneys Fees and Waiver of Jury Trial.**

**11.1.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

**11.2.** IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

**12. Indemnification.**

**12.1.** Consultant shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement.

**12.2.** Nothing herein is intended to serve as a waiver of sovereign immunity by the City nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The City is subject to section 768.28, Florida Statutes, as may be amended from time to time.

**12.3.** The provisions of this section shall survive termination of this Agreement.

**13. Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

**14. Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

**15. Entire Agreement/Modification/Amendment.**

- 15.1.** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 15.2.** No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**16. Ownership and Access to Records and Audits.**

- 16.1.** Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Consultant during the term of this Agreement (“Work Product”) belong to the City. Consultant shall promptly disclose such Work Product to the City and perform all actions reasonably requested by the City (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2.** Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’s performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant 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, and following completion of the Agreement until the records are transferred to the City.
- 16.3.** Upon request from the City’s custodian of public records, Consultant shall 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.4.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
- 16.5.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Consultant shall be delivered to

the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

**16.6.** Any compensation due to Consultant shall be withheld until all records are received as provided herein.

**16.7.** Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

**16.8.** Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. **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: ERIKA GONZALEZ, MMC, 201 WESTWARD DRIVE, MIAMI SPRINGS, FL 33166, 305-805-5006, GONZALEZE@MIAMISPRINGS-FL.GOV.**

**17. Nonassignability.** This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

**18. Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**19. Independent Contractor.** The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

**20. Compliance with Laws.** The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

**21. Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

- 22. Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
- 23. Prohibition of Contingency Fees.** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- 24. Public Entity Crimes Affidavit.** Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 25. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 26. E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 27. Non-Exclusive Agreement.** The City reserves the right to procure or acquire similar services from another provider while this Agreement is in full force and effect.
- 28. Termination Due To Lack of Funding.** This Agreement is subject to the condition precedents that: (i) City funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the City secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the City Commission relative to the Services; and (iii) the City Commission enacts legislation or other necessary resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. The City represents to Consultant that the City has adopted a resolution authorizing execution of this Agreement, if required by applicable law.



**29. Background Checks.** Prior to the execution of this Agreement, the Consultant shall furnish the City with a copy of a screening and background check, including a criminal background check for Consultant, its officials, agents, employees or subcontractors providing Services under this Agreement. The Consultant shall be responsible for updating the City in writing with any additions and deletions of the individuals authorized to provide Services under this Agreement. In the event that additional individuals are authorized to perform such Services, the Consultant shall furnish the City with a copy of a screening and background check, including a criminal background check, prior to such individual commencing such Services. It shall be in the City Manager’s complete and sole discretion as to whether the type of check and the results are acceptable. If compliance with this section is required, the City shall select this box: .

**30. American Rescue Plan Act Contract Conditions.** The Consultant acknowledges that the Services may be fully or partially funded utilizing Coronavirus State and Local Fiscal Recovery Funds allocated to the City pursuant to the American Rescue Plan Act (“ARPA”). Towards that end, the Consultant shall be required to comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by ARPA, as further detailed in the ARPA Addendum.

If compliance with the ARPA Addendum is required, the City shall select this box: .

**31. Grant Funding.** The Contractor acknowledges that the Services may be fully or partially funded utilizing funds from the grants listed below (each a “Grant”). Accordingly, the Contractor warrants and represents that it has reviewed the terms and conditions for each Grant and will perform the Services in accordance with the terms and conditions of the Grant. If the Services will be funded utilizing Grant funds, the City shall select this box: .

Grant Title	Grant Agreement Exhibit
FDEP Grant Agreement No. C2206	Exhibit “C”
FDEP Grant Agreement No. LPA0192	Exhibit “D”

If the Services will be funded utilizing Grant funds, the City shall select this box: .

**32. Conflicts; Order of Priority.** This document without exhibits is referred to as the “Base Agreement.” In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:

**32.1.** First Priority: Base Agreement;

- 32.2.** Second Priority: ARPA Addendum
- 32.3.** Third Priority: Exhibit C – Grant Agreement C2206;
- 32.4.** Fourth Priority: Exhibit D – Grant Agreement LPA0192;
- 32.5.** Fifth Priority: Exhibit A – Scope of Services;
- 32.6.** Sixth Priority: the RFQ;
- 32.7.** Seventh Priority: Exhibit D – Rate Schedule; and
- 32.8.** Eighth Priority: Exhibit B – Consultant’s Proposal.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

**CITY OF MIAMI SPRINGS**

**CONSULTANT**

By: \_\_\_\_\_  
William Alonso, CPA, CGFO  
City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Attest:

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Erika Gonzalez, MMC  
City Clerk

Entity: \_\_\_\_\_

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
City Attorney

**Addresses for Notice:**

City of Miami Springs  
Attn: City Manager  
201 Westward Drive  
Miami Springs, FL 33166  
305-805-5011 (telephone)  
alonsow@miamisprings-fl.gov (email)

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Haydee Sera, Esq.  
City of Miami Springs Attorney  
2800 Ponce de Leon Boulevard, 12<sup>th</sup> Floor  
Coral Gables, FL 33134  
hsera@wsh-law.com (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**E-VERIFY AFFIDAVIT**

In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

**Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_  
\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
Entity Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Florida  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_(name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_  
\_\_\_\_\_(name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as Commissioned)

\_\_\_\_\_  
Personally known to me; or  
\_\_\_\_\_  
Produced identification (Type of Identification: \_\_\_\_\_)  
\_\_\_\_\_  
Did take an oath; or  
\_\_\_\_\_  
Did not take an oath

**EXHIBIT A**  
**SCOPE OF SERVICES**

**AMERICAN RESCUE PLAN ACT ADDENDUM TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
CITY OF MIAMI SPRINGS  
AND  
AE ENGINEERING, INC.**

**THIS ARPA ADDENDUM** to the **PROFESSIONAL SERVICES AGREEMENT** (the “ARPA Addendum”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date of this Addendum”), by and between **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”) and **AE ENGINEERING, INC.**, a Florida for-profit corporation (hereinafter, the “Contractor”). Collectively, the City and the Contractor are referred to as “Parties.”

**WHEREAS**, on [DATE], the City entered into a Professional Services Agreement with the Contractor for Construction Engineering and Inspection (CEI) Services for the Oakwood Drive and East Drive Stormwater Roadway Improvements Project (the “Project”), as further defined in the Agreement (the “Agreement”); and

**WHEREAS**, on March 11, 2021, the federal government adopted the American Rescue Plan Act (“ARPA”), which, among other things, provides local governments with emergency COVID-19 funding; and

**WHEREAS**, the City desires to utilize ARPA funding to implement the Project (the “Project”); and

**WHEREAS**, in order to utilize ARPA funding for the Project, the City desires to incorporate federally required contract provisions relating to ARPA into the Agreement, as set forth in this ARPA Addendum; and

**WHEREAS**, the City and Contractor wish to modify the terms of the Agreement in accordance with the terms and conditions set forth in this ARPA Addendum.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth herein, the City and Contractor agree as follows:<sup>1</sup>

**1. Recitals Incorporated.** The above recitals are true and correct and incorporated herein.

**2. American Rescue Plan Act Provisions.** The Agreement is hereby amended by adding the following provisions to the Agreement:

**2.1. Mandated Federal Agreement Conditions.**

**2.1.1.** In connection with the performance of this Agreement, Contractor acknowledges that compensation for the Project services under this Agreement shall be fully or partially

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<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words.

funded using the Coronavirus State and Local Fiscal Recovery Funds allocated to the City pursuant to the American Rescue Plan Act. As such, Contractor shall comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by the American Rescue Plan Act, including, but not limited to the following documents and guidelines, which are incorporated herein and made a part of this Agreement:

**ARPA Exhibit 1.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable and as may be amended from time to time;

**ARPA Exhibit 2.** The U.S. Department of the Treasury's Final Rule governing ARPA, dated January 27, 2022;

**ARPA Exhibit 3.** U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Award Terms and Conditions (Assistance Listing Number 21.019);

**ARPA Exhibit 4.** The U.S. Department of the Treasury's Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions, dated April 27, 2022;

**ARPA Exhibit 5.** American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement between the City and the State of Florida, Division of Emergency Management;

**ARPA Exhibit 6.** The U.S. Department of the Treasury's ARPA Compliance and Reporting Guidance, dated June 17, 2022; and

**ARPA Exhibit 7.** Assurances of Compliance with Civil Rights Requirements.

A copy of the above-referenced documents are available for inspection by the Contractor at the Office of the City Clerk and at the following City link: <https://www.miamisprings-fl.gov/finance/coronavirus-state-and-local-fiscal-recovery-funds-slfrf-program-part-american-rescue-plan>.

**2.1.2. Title VI Requirements.** Contractor acknowledges that the City has certified compliance with Title VI of the Civil Rights Act of 1964 to the U.S. Department of the Treasury on the form incorporated herein as ARPA Exhibit 7. Towards that end, Contractor shall ensure that performance of work in connection with this Agreement complies with the certifications and requirements contained in ARPA Exhibit 7 and shall also adhere to the following provisions:

- (1) The Contractor and its subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made

a part of this Agreement. Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

(2) Pursuant to 44 C.F.R. §§ 7 and 16, and 44 C.F.R. § 206.11, and that the Contractor shall undertake an active program of nondiscrimination in its administration of the Work under this Agreement.

**2.1.3. Americans with Disabilities Act Requirements.** The Contractor agrees to comply with the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and Local government services, and telecommunications. Additionally, Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 3601), which prohibits discrimination against individuals on the basis of discrimination under any program or activity under this Agreement.

**2.1.4. Age Discrimination Act of 1975.** Contractor shall comply with the requirements of 42 U.S.C. §§ 6101 et seq., as amended, and the Treasury’s implementing regulations (31 CFR Part 23), which prohibits the discrimination on the basis of age in programs or activities under this Agreement.

**2.1.5. Protections for Whistleblowers.**

(1) In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

(2) The list of persons and entities referenced in the paragraph above includes the following:

i.A Member of Congress or a representative of a committee of Congress.

ii.An Inspector General

iii.The Government Accountability Office.

iv.A Federal employee responsible for contract or grant oversight or management at the relevant agency.



v. An authorized official of the Department of Justice or other law enforcement agency.

vi. A court or grand jury.

vii. A management official or other employee of the Contractor, subcontractor, the State of Florida, or the City who has the responsibility to investigate, discover, or address misconduct.

(3) The Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

**2.1.6. Compliance with Immigration and Nationality Act (INA).** Contractor hereby certifies that it does not knowingly employ unauthorized alien workers in violation of the employment provisions contained in 8 USC Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)].

**2.1.7. Seat Belts Required.** Pursuant to Executive Order 13043, 62 FR 19217, Contractor shall adopt and enforce policies or programs that require employees to use seat belts while operating or traveling on vehicles owned, rented, or personally owned by the Contractor and its employees while performing the Work.

**2.1.8. Texting While Driving Ban.** Pursuant to Executive Order 13513, 74 FR 51225, Contractor shall adopt and enforce policies that ban text messaging while driving and workplace safety policies designed to decrease accidents caused by distracted drivers.

**2.1.9. Publication.** Contractor shall obtain approval from the City in writing prior to issuing any publications in connection with this Agreement. If approved by the City, the Contractor shall include the following language in any and all publications issued:

“This Project is [being funded/was supported] in part by federal award number (FAIN) [Insert Project FAIN] awarded to the City of Miami Springs by the U.S. Department of the Treasury.”

**2.1.10. Reporting Conflict of Interests.** Contractor agrees to disclose in writing to the City, U.S. Department of the Treasury, and the State of Florida, as appropriate, any potential conflicts of interest affecting the use of funds awarded under the American Rescue Plan Act in accordance with 2 CFR 200.112.

**2.2. Compliance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200).** In accordance with the Final Rule and other guidelines provided in connection with the American Rescue Plan Act, Contractor shall be subject to the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR Part 200, including, but not limited to:

**2.2.1. Equal Employment Opportunity Compliance.** During the performance of this Agreement, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
  - b. layoff or termination;
  - c. rates of pay or other forms of compensation; and
  - d. selection for training, including apprenticeship

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the U.S. Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**2.2.2. Contract Work Hours and Safety Standards Act Compliance.** During the performance of this Agreement, the Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 through 3708), including as follows:

- (1) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Agreement Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**2.2.3. Clean Air Act Compliance.** During the performance of this Agreement, the Contractor shall comply with the provisions of Clean Air Act (42 U.S.C. § 7401 et seq., as amended) and specifically agrees as follows:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Environmental Protection Agency Region 4 (Southeast) Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance in connection with this Agreement.

**2.2.4. Federal Water Pollution Control Act Compliance.** During the performance of this Agreement, the Contractor shall comply with the provisions of Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., as amended) and specifically agrees as follows:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Environmental Protection Agency Region 4 (Southeast) Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance in connection with this Agreement.

**2.2.5. Debarment and Suspension Compliance.** During the performance of this Agreement, the Contractor warrants that Contractor or its subcontractors are not debarred, suspended, or otherwise ineligible for contract awards under Executive Orders 12549 and 12689. Contractor shall comply with the following provisions:

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180, the U.S. Department of the Treasury's implementing regulations at 31 CFR Part 19, and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- (5) Contractor certifies that they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
  - ii. Have not, within a five (5)-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in

connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local); and
- iv. Have not, within a five (5)-year period preceding this Agreement, had one or more public transactions (Federal, State or Local) terminated for cause or default. If the Contractor is unable to obtain and provide such certification, then the Contractor shall attach an explanation to this Agreement as to why not.

**2.2.6. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended).** During the performance of this Agreement, the Contractor and its subcontractors shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended). Specifically, Contractor represents and warrants as follows:

- (1) No Funds received by the Contractor under this Agreement have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any monies, other than Funds received by Contractor under this Agreement, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The Contractor shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such sub-recipients shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**2.2.7. Copeland “Anti-Kickback” Act.** During the performance of this Agreement, the Contractor and its subcontractors shall comply with the provisions of the Copeland “Anti-Kickback” Act as follows:

- (1) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal government may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**2.2.8. Procurement of Recovered Materials.** Contractor shall comply with the provisions of 2 C.F.R.323, including Section 6002 of the Solid Waste Disposal Act. Towards that end, in the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (3) at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

**2.2.9. Domestic Preferences for Procurements.** To the greatest extent practicable, Contractor and its subcontractors shall provide preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, in accordance with 2 CFR 200.322, “Domestic preferences for procurements.”

**2.2.10. 2 CFR Subpart F – Audit Requirements.** Contractor shall assist the City in complying with the audit requirements under 2 CFR Subpart F – Audit Requirements (“Federal Audit Provisions”) and the reporting requirements of the U.S. Department of the Treasury’s Final Rule, as amended, and other guidelines issued in connection with the American Rescue Plan Act.

- (1) Contractor shall assist the City in complying with the Federal Audit Provisions by providing the City, the State of Florida, the U.S. Department of the Treasury, the Treasury Office of the Inspector General, the Government Accountability Office, or other federal government entities, and any of their duly authorized representatives, access to personnel, accounts, books, records, supporting documentation, and other information relating to the performance of the Agreement or the Work (“Documentation”) necessary to complete federal audits. Contractor shall promptly assist the City in the event Documentation must be supplemented to address audit findings or other federal inquiries.
- (2) Contractor shall keep all Documentation up-to-date throughout the performance of this Agreement and the Work. Contractor shall provide the City with all Documentation for each fiscal year by October 1 of each year or within five days of the completion of the Work, whichever occurs first. Contractor shall assist the City in complying with additional guidance and instructions issued by the U.S. Department of the Treasury governing the reporting requirements for the use of American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds.

**3. Conflict; Addendum Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this ARPA Addendum and the terms and provisions of the Agreement, the terms and provisions of this ARPA Addendum shall control.

**4. Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

**5. Defined Terms.** All initial capitalized terms used in this ARPA Addendum but not otherwise defined herein shall have the same meaning ascribed thereto in the Agreement.

**6. Counterparts.** This ARPA Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this ARPA Addendum shall have the same force and effect as an original hereof.

**[Remainder of page intentionally left blank.  
Signature pages follow.]**







# AGENDA MEMORANDUM

**Meeting Date:** 10/9/2023

**To:** The Honorable Mayor Maria P. Mitchell and Members of the City Council

**Via:** JC Jimenez, City Manager

**From:** Aeemed Jaime, Procurement Specialist

**Subject:** Recommendation to Award Contract for the Construction of Oakwood Drive and East Drive Stormwater and Roadway Improvement Project to Roadway Construction, LLC.

**RECOMMENDATION:** Recommendation by the Procurement Department that Council award City Invitation To Bid No. 08-22/23 to Roadway Construction, LLC. as the lowest, responsive and responsible bidder, and authorize the City Manager to execute a contract in the amount of \$5,749,419.84 for Construction of the Oakwood Drive and East Drive Stormwater and Roadway Improvement Project.

**DISCUSSION:** On August 17, 2023, the City advertised ITB No. 08-22/23 for the Construction of Oakwood Drive and East Drive Stormwater and Roadway Improvement Project (“Project”). The City’s advertisement was broadcast to 2152 vendors. On August 22, 2023, contractors were required to attend a Mandatory Pre-Bid and Mandatory Site-Visit conference and eleven individuals attended. On September 14, 2023, the City received 3 bids – bid tabulation sheet as (Attachment "C") all of which were considered responsive.

Roadway Construction, LLC. (the “Contractor”) was determined to be the lowest, responsive and responsible bidder with a bid for construction of the Project in the amount of \$5,749,419.84. Accordingly, City Staff recommends awarding the Contractor a construction contract for construction of the Project, which will be substantially completed by July 2025. If awarded an agreement, AE Engineering Inc. will provide Construction Engineering and Inspection (CEI) Services for the Project pursuant to Request For Qualifications No. 06-22/23.

**FUNDING:** The Project costs will be reimbursed and funded through two State legislative appropriations (Agreement No. C2206 & LPA0192) amounting to \$2.5 Million approved by Council on September 13, 2021, and on December 12, 2022, via Resolution No. 2021-3938 & Resolution No. 2022-4056. Other remaining costs of this Project will be funded through American Rescue Plan Act (ARPA) grant funding.

**Submission Date and Time:** 10/18/2023 7:01 PM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
Department: <u>Procurement Department</u>	Dept. Head: _____	Dept./ Desc.: <u>City Manager’s Office</u>
Prepared by: <u>Aeemed Jaime</u>	Procurement: _____	Account No.: _____
Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Asst. City Mgr.: _____	Additional Funding: _____
Budgeted/ Funded: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Refer to above.	City Manager: _____	Amount previously approved: \$ <u>0.00</u>
		Current request: \$ _____
		Total vendor amount: \$ <u>\$5,749,419.84</u>

# Tabulation Sheet

**Agency Name** City of Miami Springs

**Bid Number** ITB-ITB 08-22/23-1-2023/A.J

**Bid Name** INVITATION TO BID No.: 08-22/23 CONSTRUCTION OF OAKWOOD DRIVE AND EAST DRIVE STORMWATER AND ROADWAY IMPROVEMENTS PROJECT

**Bid Due Date** 09/14/2023 14:30:00 Eastern

**Bid Opening** Closed


3 responses found.

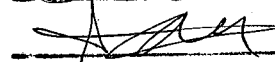
✓ online, ☒ offline, ● not submitting, ⚠ not received

Company	Responded	Address	Bid Amount	Alt Bid Amount	Declared Attributes	Documents	Sent
1. Metro Express Inc.	09/14/2023 09:41:01 Eastern	9390 NW 109 St., Medley, FL, 33178	\$8066675.3000	0.0000		Completed Supplier Response w/any required forms	✓
2. Roadway Construction, LLC	09/14/2023 14:11:14 Eastern	12391 Southwest 130th Street, Miami, FL, 33186	\$5749419.8400	0.0000	Hispanic Owned, Small Business	Completed Supplier Response w/any required forms	✓
3. The Stout Group, LLC	09/14/2023 12:45:59 Eastern	10850 NW 138th Street, Bay #3, Hialeah Gardens, FL, 33018	\$9790492.2700	0.0000		Completed Supplier Response w/any required forms	✓

Bid recieved was duplicate from Demand Star.

Witnessed by:

 Sandra Duarte 9/14/23

 9/14/23 Acemed Jaime

**RESOLUTION NO. 2023-\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, SELECTING ROADWAY CONSTRUCTION, LLC FOR CONSTRUCTION OF THE OAKWOOD DRIVE AND EAST DRIVE STORMWATER AND ROADWAY IMPROVEMENT PROJECT PURSUANT TO INVITATION TO BID (ITB) NO. 08-22/23; AUTHORIZING NEGOTIATION AND EXECUTION OF A CONSTRUCTION CONTRACT IN AN AMOUNT NOT TO EXCEED \$5,749,419.84; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 13, 2021, the City Council of the City of Miami Springs (the “City”) adopted Resolution No.2021-3928, accepting a State Appropriation Grant in the amount of \$1,500,000 for construction of the East Drive segment of the Oakwood Drive and East Drive Stormwater and Roadway Improvements Project (the “Project”); and

**WHEREAS**, on February 13, 2023, the City Council adopted Resolution No.2023-4070 accepting a Coral Protection and Restoration (CPR) Program Grant in the amount of \$2,000,000 for construction of the Project; and

**WHEREAS**, pursuant to Resolution Nos. 2021-3911, 2022-3970, and 2022-4074, the City’s design consultant, Bermello, Ajamil & Partners, Inc., has provided professional engineering design services for the Project; and

**WHEREAS**, on December 21, 2022, the City issued Invitation to Bid No. 03-22/23 (the “ITB”) for construction of the Project; and

**WHEREAS**, three sealed bids were received by the ITB deadline; and

**WHEREAS**, Roadway Construction, LLC (the “Contractor”) submitted the lowest bid for the Project at a total cost of \$5,749,419.84; and

**WHEREAS**, the City Council desires to select the Contractor to construct the Project and authorize the City Manager to negotiate and execute a Construction Contract (the “Contract”) with the Contractor for construction of the Project in an amount not to exceed \$5,749,419.84 in substantially the form attached as Exhibit “A”; and

**WHEREAS**, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Selection.** That the City Council hereby selects the Contractor to construct the Project.

**Section 3. Authorization.** That the City Council hereby authorizes the City Manager to negotiate and execute the Contract with the Contractor in an amount not to exceed \$5,749,419.84 in substantially the form attached as Exhibit "A," subject to approval by the City Attorney as to form, content, and legal sufficiency.

**Section 4. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

- Vice Mayor Jacky Bravo \_\_\_\_\_
- Councilmember Dr. Walter Fajet, Ph.D. \_\_\_\_\_
- Councilmember Jorge Santin \_\_\_\_\_
- Councilmember Dr. Victor Vazquez, Ph.D. \_\_\_\_\_
- Mayor Maria Puente Mitchell \_\_\_\_\_

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY

## CONTRACT FOR CONSTRUCTION

**THIS CONTRACT FOR CONSTRUCTION** (this "Contract") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date") by and between the **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the "City"), and **ROADWAY CONSTRUCTION, LLC**, a Florida limited liability company (the "Contractor").

**WHEREAS**, on December 21, 2022, the City issued Invitation to Bid No. 03-22/23 (the "ITB") for construction of the Oakwood Drive and East Drive Stormwater Roadway Improvements Project (the "Project"), which ITB is incorporated herein by reference and made a part hereof as Exhibit "A"; and

**WHEREAS**, in response to the City's ITB, the Contractor submitted a bid for the Project ("Bid"), which Bid is incorporated herein by reference and made a part hereof as Exhibit "B"; and

**WHEREAS**, Contractor submitted the lowest, responsive and responsible bid in the amount of \$5,794,419.84 in response to the ITB and was selected and awarded this Contract pursuant to Resolution No. 2023-\_\_\_\_\_ for performance of the Work (as hereinafter defined); and

**WHEREAS**, Contractor has represented to the City that it possesses the necessary qualifications, experience and abilities to perform the Work or the Project, and has agreed to provide the Work on the terms and conditions set forth in this Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows:

### **1. SCOPE OF WORK**

**1.1. Scope of Work.** Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the work described in the Contract Documents (the "Work" or the "Project") including, without limitation as described in the ITB attached hereto as Exhibit "A," the Contractor's Bid attached hereto as Exhibit "B," and the Construction Plans and Technical Specifications prepared by Bermello, Ajamil & Partners, Inc. (the "Project Consultant") attached hereto as Exhibit "C" (the "Plans") and any other documents incorporated herein by reference and made a part of this Contract for the following Project:

#### **OAKWOOD DRIVE AND EAST DRIVE STORMWATER ROADWAY IMPROVEMENTS PROJECT**

**1.2. Pre-Construction Conference.** Within fourteen (14) calendar days after this Contract is executed by both parties, and before any Work has commenced, a pre-construction conference will be held between the City, the Contractor, and the Project Consultant. The Contractor must submit its project schedule and schedule of values, if applicable, prior to this conference.

**1.3. Project Schedule.** Contractor must submit a proposed Project Schedule as follows:

**1.3.1.** Schedule must identify the schedule for each location comprising the Project. The proposed Project schedule must be submitted within ten (10) calendar days from the date this Contract is executed by both parties for the review and approval of the Project Consultant or City as applicable. This initial schedule shall establish the baseline schedule for the Project.

**1.3.2.** All updates of schedules must be tracked against the baseline schedule and must be at a minimum submitted with each pay application. An updated schedule tracked against the baseline must also be submitted upon execution of each Change Order that impacts the Contract Time. Failure to submit such schedules will result in the rejection of any submitted payment application.

**1.3.3.** All Project Schedules must be prepared in Microsoft Project or approved equal by the City. At the time of submission of schedules, Contractor must submit a hard copy as well as an electronic version. Electronic versions must not be submitted in a .pdf format.

**1.4. Records.**

**1.4.1. As-Built Drawings.** During the Work, Contractor must maintain records of all deviations from the Drawings as approved by the Project Consultant and prepare two copies of As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the City and to certify in writing that the As-Built Record Drawings are correct and accurate, including the actual location of all infrastructure, internal piping, and electrical/signal conduits in or below the concrete floor (indicating the size, depth, and voltage in each conduit). To record actual construction, Contractor must legibly mark on-site structures and site Work as follows:

**1.4.1.1.** Depths of various elements of foundation in relation to finish first floor datum.

**1.4.1.2.** All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances referenced to permanent surface improvements. Actual installed pipe material, class, etc.

**1.4.1.3.** Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.

**1.4.1.4.** Field changes in dimensions and details.

**1.4.1.5.** Changes made by Project Consultant's written instructions or by Change Order.

**1.4.1.6.** Details not on original Contract Drawings.

**1.4.1.7.** Equipment, conduit, electrical panel locations.

**1.4.1.8.** Project Consultant's schedule changes according to Contractor's records and shop drawings.

**1.4.1.9.** Specifications and Addenda: Legibly mark each section to record:

**1.4.1.9.1.** Manufacturer, trade name, catalog number and Supplier of each product and item of equipment actually installed.

**1.4.1.9.2.** Changes made by Project Consultant's written instructions or by Change Order.

**1.4.1.10.** Approved Shop Drawings: Provide record copies for each process, equipment, piping, electrical system and instrumentation system.

**1.4.1.10.1.** As-built documents must be updated monthly as a condition precedent to payment. A final survey signed and sealed by a surveyor must be provided to the City at no additional cost, including digital I (CAD and PDF) versions.

**1.4.1.10.2.** For construction of new building, or building additions, field improvements, and or roadway improvements, as-built drawings must be signed and sealed by a Florida Licensed Registered Land Surveyor.

**1.4.2. Record Set.** Contractor must maintain in a safe place one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, amendments, COs, RFIs, and field directives, as well as all written interpretations and clarifications issued by the Project Consultant, in good order and annotated to show all changes made during construction. The record documents must be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from COs and/or field directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor must certify the accuracy of the updated record documents. The record documents must be clean, and all changes, corrections and dimensions must be given in a neat and legible manner in red. Upon Final Completion and as a condition precedent to Contractor's entitlement to final payment, the Record Set must be delivered to the Project Consultant by the Contractor. The Record Set of Drawing must be submitted in both hard copy and as electronic plot files.

**1.4.3. Construction Photographs.** Prior to commencement of the Work the Contractor must take digital photographs and color audio-video recording to document existing conditions and submit copies in an acceptable format to the City. Contractor must submit with each application for payment photographs that accurately reflect the progress of all aspects of the Work. The number of photographs to be taken will be based on the magnitude of the Work being performed. Contractor must submit one copy of each photograph in print and digitally. The photographs must be printed on 8" X 10" high resolution glossy commercial grade and weight color



photographic print paper or in a format acceptable to the City. Each photograph must be imprinted on its face with the title of the Project, the date, and time the picture was taken. Digital photographs must be taken using .jpeg format and will be submitted through a file-sharing site (such as Dropbox) or on a CD-ROM or flash drive clearly identifying the name of the Project, the name of the Contractor, and the timeframe in which the pictures were taken. Initial set up prints will be submitted in a three-ring binder with each picture protected by a clear plastic sleeve. Subsequent prints are to be submitted in clear plastic sleeves that can be added to the binder. The three-ring binder must be of such size to be able to hold all print pictures.

### **1.5. Staging Site.**

**1.5.1.** The Contractor is solely responsible for making all arrangements for any staging site(s) that may be necessary for the performance of the Work and the Contractor is responsible for all site security, including any fencing of the site, and any loss, damage or theft to its equipment and materials. Any fencing of the Staging Site is subject to the prior written approval of the City.

**1.5.2.** The City at its sole discretion may make a staging site available for use by the Contractor. If such site is made available by the City, the City assumes no responsibility or liability for the equipment or materials stored on the site, and the Contractor will be solely responsible for any loss, damage or theft to its equipment and materials. The Contractor must restore the site to its pre-existing condition prior to the Contractor's use of the site.

**1.5.3.** The Contractor may be required to provide or may choose to use an office trailer for the duration of the Project. The Contractor must have the prior written approval of the City as to the use of any office trailer and the placement location for the office trailer. The Contractor must obtain all required permits from the appropriate regulatory agencies.

**1.5.4.** No parking is permitted at a City provided staging site without the prior written approval of the City.

**1.6. Purchase and Delivery, Storage and Installation.** All materials must be F.O.B. delivered and included in the cost of the Work. The Contractor is solely responsible for the purchase, delivery, off-loading and installation of all equipment and material(s). Contractor must make all arrangement for delivery. Contractor is liable for replacing any damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, state (including FDOT), Miami-Dade County, and local laws, rules and regulations. No materials will be stored on-site without the prior written approval of the City.

**1.7. Approval of Subcontractors.** For any scope of work that the Contractor will utilize a subcontractor, the Contractor may only retain or utilize the services of the particular subcontractor with the prior written approval of the City Manager, which approval may be granted or withheld in the City Manager's sole and absolute discretion. The Contractor shall provide at least fourteen (14) days notice to the City Manager and the Project Consultant of its intent to retain or utilize a subcontractor.

**1.8. Project Signage.** Contractor must furnish and install two (2) Project signs at the Project Site in accordance with the requirements provided by the Project Consultant or the City as applicable.

## **2. CONTRACT TIME**

**2.1.** Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed providing a commencement date and issued by the City Manager or designee. The Notice to Proceed will not be issued until Contractor's submission to City of all required documents and after execution of this Contract.

**2.2.** Time is of the essence throughout this Contract. The Contractor shall prosecute the Work with faithfulness and diligence and the **Work shall be substantially completed within by June 1, 2025 (“Contract Time”)**. Substantial Completion shall be defined for this purpose as the date on which City receives beneficial use of the Project. **The Work shall be fully completed in accordance with the Contract Documents by June 30, 2025 (“Final Completion Time”)**. The Final Completion date is defined as the date determined by the City when all Work, including punch list items, has been completed in accordance with the Contract Documents and Contractor has delivered to City all documentation required herein.

**2.3.** Upon failure of Contractor to substantially complete the Work as defined in this Agreement within the Contract Time, Contractor shall pay to City the sum of **\$3,756** for each calendar day after the expiration of the Contract Time that the Contractor fails to achieve Substantial Completion up until the date that the Contractor achieves Substantial Completion. Upon failure of Contractor to fully complete the Work and achieve Final Completion within the Final Completion Time, Contractor shall pay to City the sum of **\$3,756** for each calendar day after expiration of the Final Completion Time that the Contractor fails to achieve Final Completion up until the date that the Contractor achieves Final Completion. These amounts are not penalties but are liquidated damages payable by Contractor to City for the failure to provide full beneficial occupancy and use of the Project as required. Liquidated damages are hereby fixed and agreed upon between the parties who hereby acknowledge the difficulty of determining the amount of damages that will be sustained by City as a consequence of Contractor's delay and failure of Contractor to complete the Work on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for completion is given.

**2.4.** City is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract. In case the liquidated damage amount due to City by Contractor exceeds monies due Contractor from City, Contractor shall be liable and shall immediately upon demand by City pay to City the amount of said excess.

## **3. CONTRACT PRICE AND PAYMENT PROCEDURES**

**3.1. Guaranteed Maximum Price.** The City shall pay the Contractor an amount not to exceed \$5,794,419.84 for the performance of the Work in accordance with the line items and unit prices included in the Contractor's Bid attached hereto as Exhibit “B” (the “Contract Price”). The Contract Price shall be full compensation for all services, labor,

materials, equipment, and costs, including overhead and profit, associated with completion of all the Work in full conformity with the Contract Documents and adjusted only by written change orders signed by both parties and approved as required by local law. The Contract Price shall include all applicable sales taxes as required by law.

**3.2. Schedule of Values.** The Contractor must submit two copies of schedule of values within ten (10) calendar days from the date this Contract is executed by both parties. The schedule of values shall indicate a complete breakdown of labor and material of all categories of Work on the Project. Contractor's overhead and profit must be listed as separate line items. Each line item must be identified with the number and title of the major specification section or major components of the items. The Project Consultant or City as applicable may require further breakdown after review of the Contractor's submittal. The City reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the schedule of values. The combined total value for mobilization under the Schedule of Values shall not exceed 5% of the value of the Contract. The accepted Schedule of Values must be incorporated into the Contractor's payment application form. The Contractor guarantees that each individual line item contained in the schedule of values submitted as part of a competitive solicitation shall not be increased without written approval by the City Manager.

**3.3. Payment Application Procedures.** City shall make progress payments, deducting the amount from the Contract Price above on the basis of Contractor's Applications for Payment on or before twenty (20) days after receipt of the Pay Application. Rejection of a Pay Application by the City shall be within twenty (20) days after receipt of the Pay Application. Any rejection shall specify the applicable deficiency and necessary corrective action. Any undisputed portion shall be paid as specified above. All such payments will be made in accordance with the Schedule of Values established in the Contract Documents or, in the event there is no Schedule of Values, as otherwise provided in the Contract Documents. In the event the Contract Documents do not provide a Schedule of Values or other payment schedule, Applications for Payment shall be submitted monthly by Contractor on or before the 10<sup>th</sup> of each month for the prior month to the Project Consultant. Progress payments shall be made in an amount equal to the percentage of Work completed as determined by the City or City's Project Consultant, but, in each case, less the aggregate of payments previously made and less such amounts as City shall determine or City may withhold taking into account the aggregate of payments made and the percentage of Project completion in accordance with the Contract Documents and Schedule of Values, if any. The Contractor agrees that five percent (5%) of the amount due for each progress payment or Pay Application (the "Retainage") shall be retained by City until final completion and acceptance of the Work by City. In the event there is a dispute between Contractor and City concerning a Pay Application, dispute resolution procedures shall be conducted by City commencing within 45 days of receipt of the disputed Payment Application. The City shall reach a conclusion within 15 days thereafter and promptly notify Contractor of the outcome, including payment, if applicable.

**3.4. Progress Payment Applications.** Each progress payment application submitted to the City must include:

**3.4.1.** A sworn and certified progress payment affidavit indicating that all laborers, material suppliers, and subcontractors dealing with the Contractor were paid in full as it relates to all Work performed up to the time of the request for payment;

**3.4.2.** Partial conditional releases or waivers of lien by the Contractor, material suppliers, subcontractors, and any lienors serving a Notice to the City and evidence of proof of payment of any indebtedness incurred with respect to the Work of the Contractor as may be required by the City;

**3.4.3.** Evidence that all Work was fully performed as required by the Contract Documents up to the time of the request for payment and that the Work was inspected and accepted by the City and any other governmental authorities required to inspect the Work; and

**3.4.4.** An updated Project schedule, including a two-week look-ahead schedule, as approved in writing by the City Manager.

**3.4.5.** All Buy-Out Savings, including supporting documentation relating to the calculation of the Buy-Out Savings.

**3.5. Final Payment.** Upon Final Completion of the Work by Contractor in accordance with the Contract Documents and acceptance by the City, and upon receipt of consent by any surety, City shall pay the remainder of the Contract Price (including Retainage) as recommended by the City's Project Consultant and Building Official. Final payment is contingent upon receipt by City from Contractor of:

**3.5.1.** An affidavit that payrolls, bills for materials, equipment, and other indebtedness were paid in full as it relates to all Work performed under this Contract;

**3.5.2.** A certificate evidencing that insurance required by the Contract Documents shall remain in effect after final payment is made;

**3.5.3.** A written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;

**3.5.4.** Documentation of any special warranties, including, but not limited to, any manufactures' warranties or specific subcontractor warranties;

**3.5.5.** Evidence that all Punch List items have been fully completed to the satisfaction of the City;

**3.5.6.** All previously undelivered manufacturer and subcontractor guarantees, warranties, and manuals and documents required by the Contract Documents;

**3.5.7.** Final releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the City to assure a lien-free and claim-free completion of the Work;

**3.5.8.** Evidence that the Contractor has fully cleaned and restored the site, including removal of all rubbish and debris;

**3.5.9.** At least one complete set of as-built plans, reflecting an accurate depiction of Contractor's Work;

**3.5.10.** Such other documents necessary to show that the Contractor has complied with all other requirements of the Contract Documents; and

**3.5.11.** Cost Savings, including supporting documentation used to calculate the Cost Savings.

**3.6. Payment Withholding.** The City may withhold any payment, including a final payment, for application to such extent as may be necessary, as determined by the City's Project Consultant, to protect the City from loss for which the Contractor is responsible in the event that:

**3.6.1.** The Contractor performs defective Work and such Work has not been corrected, provided that the amount withheld shall be limited to the amount sufficient to cover such defective Work;

**3.6.2.** A third-party files a claim or lien in connection with the Work or this Contract;

**3.6.3.** The Contractor fails to make payments properly to subcontractors or suppliers for labor, materials, or equipment which has been paid by the City, provided that the amount withheld shall be limited to the amount sufficient to cover such payments to subcontractors or suppliers for labor, materials, or equipment;

**3.6.4.** The City has reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

**3.6.5.** The Contractor, its employees, subcontractors, or agents have damaged the City;

**3.6.6.** The City has reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay;

**3.6.7.** The Contractor has failed to progress the Work satisfactorily and/or according to the Contract Schedule;

**3.6.8.** The Contractor has failed to carry out the Work in accordance with the Contract Documents;

**3.6.9.** The Contractor has failed to provide requisite releases of lien for each payment application in accordance with the Contract Documents; and/or

**3.6.10.** Any other failure to perform a material obligation contained in the Contract Documents.

**3.7. No Waiver of City Rights.** The payment of any Application for Payment by the City, including the final request for payment, does not constitute approval or acceptance by the City of any item of the Work reflected in such Application for Payment, nor shall it be construed as a waiver of any of the City 's rights hereunder or at law or in equity.

**3.8. Payment to Sub-Contractors; Certification of Payment to Subcontractors.** The term "subcontractor," as used herein, includes persons or firms furnishing labor, materials or equipment incorporated into or to be incorporated into the Work or Project. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts as a condition precedent to payment to Contractor by the City. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete and accepted by the City.

**3.9. Cost Savings and Value Engineering.**

**3.9.1. Cost Savings.** In the event the Contractor rebids or renegotiates with any subcontractor to reduce subcontractor costs for the performance of the Work, then the difference between (i) the sum of the subcontractor costs used to establish the Contract Price, as set forth in the Schedule of Values, and (ii) the sum of the revised subcontractor costs, including any early payment or similar discounts (the "Cost Savings"), shall revert to the City. The Contract Price shall be adjusted in accordance with any Cost Savings through a Change and the Schedule of Values shall also be revised to reflect the new Contract Price.

**3.9.2. Value Engineering.** Contractor shall participate in Value Engineering the Contract Documents with the City and the Architect with the goal of finding acceptable means for reducing the cost of the Work. Upon acceptance by the City of recommendation for Value Engineering, the Contract Documents shall be modified to reflect such changes. All savings in connection with Value Engineering of the Work shall revert to City.

**4. CONTRACT DOCUMENTS**

**4.1.** The Contract Documents, which comprise the entire agreement between the City and the Contractor concerning the Work, consist of this Contract for Construction (including any change orders and amendments thereto), the ITB attached hereto as Exhibit "A" and any Bidding Documents or procurement documents for the Project, the Contractor's Bid for the Project (including the Schedule of Bid Items-Pricing) attached hereto as Exhibit "B," the Construction Plans and Technical Specifications prepared by the Project Consultant attached hereto as Exhibit "C," the Bonds (defined herein), Insurance Certificates, the Notice of Award, and the Notice to Proceed, all of which are deemed incorporated into and made a part of this Contract by this reference and govern this Project.

**4.2.** This Contract incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**4.3.** The Contract Documents shall remain the property of the City. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; however in no circumstances shall the Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

**4.4. Conflicts; Order of Priority.** This document without exhibits is referred to as the "Base Agreement." In the event of a conflict between the terms of this Base Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Work shall apply:

**4.4.1.** First Priority: Change Orders with later date taking precedence;

**4.4.2.** Second Priority: This Base Agreement;

**4.4.3.** Third Priority: Exhibit "A," the ITB;

**4.4.4.** Fourth Priority: Exhibit "C," the Construction Plans and Technical Specifications prepared by the Project Consultant;

**4.4.5.** Fifth Priority: Exhibit "D," FDEP Grant Agreement No. C2206;

**4.4.6.** Sixth Priority: Exhibit "E," FDEP Grant Agreement No. LPA0192; and

**4.4.7.** Seventh Priority: Exhibit "B," the Contractor's Bid.

## **5. INDEMNIFICATION**

**5.1.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, consultants, and employees, from and against any and all demands, claims, losses, expenses, suits, liabilities, causes of action, judgment or damages, including but not limited to legal fees and costs and through appeal, arising out of, related to, resulting from, or in any way connected with Contractor's negligence, recklessness, or intentional misconduct in the Contractor's performance or non-performance of this Contract, Contractor's obligations, or the Work related to the Contract, including but not limited to by reason of any damage to property, or bodily injury or death incurred or sustained by any person, or to injury to or destruction of tangible property or any other property (other than the Work itself) including the loss of use resulting therefrom, caused in whole or in part by any willful, wanton, or negligent, or grossly negligent acts or omissions of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by applicable law and

regardless of the negligence of any such party.. Additionally, the Contractor shall defend, indemnify, and hold the City harmless from all losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this Contract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any other employment related litigation or worker's compensation claims under federal, state, or local law.

**5.2.** The provisions of this section shall survive termination of this Contract.

## **6. INSURANCE AND BONDS**

### **6.1. Insurance.**

**6.1.1.** Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts not less than those specified below as satisfactory to the City, naming the City and the Florida Department of Environmental Protection ("FDEP") as Additional Insureds, underwritten by a firm rated A-X or better by Bests Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the City, reflecting the City and FDEP as Additional Insureds, no later than ten (10) days after award of this Contract and prior to the execution of this Contract by City and prior to commencing any Work. Each certificate shall include no less than (30) thirty-day advance written notice to City prior to cancellation, termination, or material alteration of said policies or insurance. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers and FDEP, its officials, employees, agents and volunteers, and the naming the City and FDEP as additional insureds. Any insurance maintained by the City or FDEP shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 6.1.

**6.1.1.1.** Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit (except for Products/Completed Operations) shall be in the amount of \$2,000,000.

**6.1.1.2.** Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from



such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

**6.1.1.3.** Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.

**6.1.1.4.** Builder's Risk property insurance upon the entire Work to the full replacement cost value thereof. This insurance shall include the interest of City and Contractor and shall provide All-Risk coverage against loss by physical damage including, but not limited to, Fire, Extended Coverage, Theft, Vandalism and Malicious Mischief. If Builder's Risk insurance is not required for this Project, the City shall select this box: .

**6.1.1.5.** Contractor acknowledges that it shall bear the full risk of loss for any portion of the Work damaged, destroyed, lost or stolen until Final Completion has been achieved for the Project, and all such Work shall be fully restored by the Contractor, at its sole cost and expense, in accordance with the Contract Documents.

**6.1.2. Certificate of Insurance.** On or before the Effective Date of this Contract, the Contractor shall provide the City with Certificates of Insurance for all required policies. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Contract, including any extensions or renewals that may be granted by the City. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to inspect and return a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the Work, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City.

**6.1.2.1. Additional Insured.** The City is to be specifically included as an Additional Insured for the liability of the City resulting from Work performed by or on behalf of the Contractor in performance of this Contract. The Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

**6.1.2.2. Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the City. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**6.1.3.** The provisions of this section shall survive termination of this Contract.

**6.2. Bonds.** Prior to performing any portion of the Work the Contractor shall deliver to City the Bonds required to be provided by Contractor hereunder (the bonds referenced in this Section are collectively referred to herein as the "Bonds"). Pursuant to and in accordance with Section 255.05, Florida Statutes, the Contractor shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work, each in an amount equal to one hundred percent (100%) of the Contract Price and each in the form provided in the Contract Documents or in other form satisfactory to and approved in writing by City and executed by a surety of recognized standing with a rating of B plus or better for bonds up to Two Million Dollars. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for such Bonds is included in the Contract Price. If notice of any change affecting the Scope of the Work, the Contract Price, Contract Time or any of the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Contractor's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly. If the surety is declared bankrupt or becomes insolvent or its right to do business in Florida is terminated or it ceases to meet applicable law or regulations, the Contractor shall, within five (5) days of any such event, substitute another bond (or Bonds as applicable) and surety, all of which must be satisfactory to City. As authorized by Section 255.05(1)(a), Florida Statutes, if this Project is exempt from posting of a payment and performance bond, the City shall select this box: .

## **7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**7.1.** In order to induce the City to enter into this Contract, the Contractor makes the following representations and warranties:

**7.1.1.** Contractor represents the following:

**7.1.1.1.** Contractor has examined and carefully studied the Contract Documents and the other data identified in the bidding documents, including, without limitation, the “technical data” and plans and specifications and the Plans.

**7.1.1.2.** Contractor has visited the Project site and become familiar with and is satisfied as to the general and local conditions and site conditions that may affect cost, progress, performance or furnishing of the Work.

**7.1.1.3.** Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations and permits that may affect cost, progress, performance and furnishing of the Work. Contractor agrees that it will at all times comply with all requirements of the foregoing laws, regulations and permits.

**7.1.1.4.** Contractor has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. Contractor acknowledges that the City does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground or ground facilities at, contiguous or near the site or for existing improvements at or near the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities and improvements) at, contiguous or near to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

**7.1.1.5.** Contractor is aware of the general nature of Work to be performed by the City and others at the site that relates to the Work as indicated in the Contract Documents.

**7.1.1.6.** Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

**7.1.1.7.** Contractor has given City written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by City is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**7.1.1.8.** The Contractor agrees and represents that it possesses the requisite qualifications and skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to City, except as otherwise expressly provided for in the Contract Documents. The Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project.

**7.2. No recovery for changed market conditions.**

**7.2.1.** In entering into the Contract, Contractor represents and warrants that it has accounted for any and all inflation-related events, recession, labor or material shortages, supply chain disruptions, delivery lead time, or price increases that may be caused by local and or national conditions, whether known or unknown at the time of entering into the Contract (the "Market Conditions"). Contractor further specifically represents and warrants that it has considered all impacts and potential impacts, including any current and future supply chain disruptions and labor shortages, associated with the following events: (1) worldwide pandemics including, but not limited to, COVID-19 and Monkey Pox (the "Pandemics") and (2) the current military conflict involving Russia and the Ukraine (the "Ukraine Military Conflict"). Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account the impacts of Market Conditions, the Pandemics, and the Ukraine Military Conflict, and has included all of those factors in the Construction Schedule and Contract Sum.

**7.2.2.** Contractor shall not seek any price increases or time extensions relating to or arising from the impacts of any Market Conditions, the Pandemics or Ukraine Military Conflict.

**7.2.3.** The City shall not make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Section.

**7.3. Contractor warrants the following:**

**7.3.1. Anti-Discrimination.** Contractor agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and agrees to abide by all federal and state laws regarding non-discrimination.

**7.3.2. Anti-Kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the City has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the City shall have the right to annul this

Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

**7.3.3. Licensing.** Contractor represents that it is a properly qualified and licensed contractor in good standing within the jurisdiction within which the Project is located. Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required licenses from the federal, state, Miami-Dade County, City, or other governmental or regulatory entity. Contractor acknowledges that it is the obligation of Contractor to obtain all licenses required for this Project, including City building permits. Prior to commencement of the Work, the Contractor shall provide the City with copies of all required licenses.

**7.3.4. Permits.** Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required permits from the federal, state, Miami-Dade County, City, or other governmental or regulatory entity with jurisdiction over the site that are necessary to perform the Work. Contractor acknowledges that it is the obligation of Contractor to obtain all permits required for this Project, including City building permits. Prior to commencement of the Work, the Contractor shall provide the City with copies of all required permits. City building permit fees may be waived for this Project. If permits are required by any other governing body or agency, the Contractor shall be obligated to pay the fees.

#### **7.4. Defective Work; Warranty and Guarantee.**

**7.4.1.** City shall have the authority to reject or disapprove Work which the City finds to be defective. If required by the City, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

**7.4.2.** Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the City or its designee, City shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by City in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, City may declare Contractor in default.

**7.4.3.** The Contractor shall unconditionally warrant and guarantee all labor, materials and equipment furnished and Work performed for a period of three (3) years from the date of Substantial Completion. If, within three (3) years after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from City, shall promptly correct such defective or nonconforming Work within the time specified by

City without cost to City. Should the manufacturer of any materials and equipment furnished provide for a longer warranty, then the Contractor shall transfer such warranty to the City prior to Final Completion. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects. Contractor shall provide and assign to City all material and equipment warranties upon completion of the Work hereunder.

**7.4.4.** Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

## **8. DEFAULT, TERMINATION, AND SUSPENSION; REMEDIES**

**8.1. Termination for Cause.** If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the Work within the Contract Time or Final Completion Time as specified in Section 2, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, City may, upon seven (7) days after sending Contractor a written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site, provide for alternate prosecution of the Work, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by City, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by City shall exceed monies due Contractor from City, Contractor shall be liable and shall pay to City the amount of said excess promptly upon demand therefore by City. In the event it is adjudicated that City was not entitled to terminate the Contract as described hereunder for default, the Contract shall automatically be deemed terminated by City for convenience as described below.

**8.2. Termination for Convenience.** This Contract may be terminated by the City for convenience upon seven (7) calendar days' written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The Contractor shall be compensated for all services performed to the satisfaction of the City. In such event, the Contractor shall promptly submit to the City its Application for Payment for final payment which shall comply with the provisions of the Contract Documents.

**8.3. Suspension of Contract.** This Contract may be suspended for convenience by the City upon seven (7) calendar days' written notice to the Contractor or immediately if suspended in connection with a local or state declaration of emergency. Suspension of

the Work will entitle the Contractor to additional Contract Time as a non-compensable, excusable delay.

**8.4. Termination Due to Lack of Funding.** This Contract is subject to the conditions precedent that: (i) City funds are available, appropriated, and budgeted for the Work, the Project, and/or Contract Price; (ii) the City secures and obtains any necessary proceeds, grants, and/or loans for the accomplishment of the Work and/or the Project pursuant to any borrowing legislation adopted by the City Council relative to the Project; and (iii) City Council enacts legislation which awards and authorizes the execution of this Contract if such is required.

**8.5. No Damages for Delay.** No claim for damages or any claim, other than for an extension of time shall be made or asserted against City by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable or whether or not caused by City. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay.

**8.6. Waiver of Consequential Damages.** Contractor assumes all risks for the following items, none of which shall be the subject of any Change Order or Claim and none of which shall be compensated for except as they may have been included in the Contractor's Contract Price as provided in the Contract Documents: Loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a quote for a change in the Work, costs to prepare, negotiate or prosecute Claims, and loss of projects not bid upon, or any other indirect and consequential costs not listed herein. No compensation shall be made for loss of anticipated profits from any deleted Work.

**8.7. Litigation of Claims.** Mediation shall not be required before either party may proceed to litigation.

**8.8. Rights and Remedies.** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder and in accordance with this Contract shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **9. CHANGES IN THE WORK**

### **9.1. Change Orders.**

**9.1.1.** Without invalidating the Contract Documents, and without notice to any Surety, the City reserves the right to make increases, decreases or other changes in the character or quantity of the Work under the Contract Documents as may be considered necessary or desirable to complete the Work in a manner satisfactory to the City. The City reserves the right to order changes, which may result in additions

to or reductions from the amount, type or value of the Work shown in the Contract, and which are within the general scope of the Contract Documents, and all such changes will be authorized only by a change order ("CO") approved in advance, and issued in accordance with provisions of the Contract Documents.

**9.1.2.** For Contractor initiated change orders, the Contractor is required to provide the Project Consultant with a detailed Request for Change Order ("RCO") in a form approved by the City, which must include the requested revisions to the Contract, including, but not limited to, adjustments in the Contract Price and/or Contract Time. The Contractor must provide sufficient supporting documentation to demonstrate the reasonableness of the RCO. The City may require Contractor to provide additional data including, but not limited to, a cost breakdown of material costs, labor costs, labor rates by trade, work classifications, and overhead rates to support the RCO. If applicable, the RCO must include any schedule revisions accompanied by an explanation of the cost impact of the proposed change. Failure to include schedule revisions in an RCO will be deemed as the Contractor's acknowledgement that the changes included in an RCO will not affect the project schedule.

**9.1.3.** Any modifications to the Contract Work, Contract Time, or Contract Price, must be effectuated through a written CO executed by both parties and, if required by the City Code of Ordinances, approved by the City Council.

**9.1.4.** In the event a satisfactory adjustment cannot be reached, and a CO has not been issued, given that time is of the essence, the City reserves the right, at its sole option, to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work at the unit prices provided in the Contract Documents. Where the City directs the Contractor to proceed on a time and materials basis, the City shall impose a maximum not-to-exceed amount and the Contractor must maintain detailed records of all labor and material costs including but not limited to payroll records and material receipts. Contractor must demonstrate its costs with sufficient evidence to be entitled to compensation from the City.

**9.2. Continuing the Work.** Contractor must continue to perform all Work under the Contract Documents during all disputes or disagreements with City, including disputes or disagreements concerning an RCO. Contractor shall not delay any Work pending resolution of any disputes or disagreements.

## **10. MISCELLANEOUS**

**10.1. No Assignment.** Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the City Manager.

### **10.2. Contractor's Responsibility for Damages and Accidents.**

**10.2.1.** Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by City and shall promptly repair any damage done from any cause.



**10.2.2.** Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by City, Contractor shall replace same without cost to City.

**10.3. Governing Law.** This Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Contract shall be proper exclusively in Miami-Dade County, Florida.

**10.4. Waiver of Jury Trial.** CITY AND CONTRACTOR KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN STATE AND OR FEDERAL COURT PROCEEDINGS IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT FOR CONSTRUCTION, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OR INACTIONS OF ANY PARTY.

**10.5. Prevailing Party; Attorneys' Fees.** In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Contract (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs, expenses, paralegals' fees, experts' fees and attorneys' fees including, but not limited to, court costs and other expenses through all trial and appellate levels. In addition, the prevailing party shall be entitled to recover from the non-prevailing party all litigation costs associated with discovery, processing, management, hosting, and production of electronically stored information (ESI).

**10.6. Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense. Any mandatory clauses which are required by applicable law shall be deemed to be incorporated herein.

**10.7. Examination and Retention of Contractor's Records.**

**10.7.1.** The City or any of its duly authorized representatives shall, for five (5) years after final payment under this Contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

**10.7.2.** The Contractor agrees to include in any subcontractor contracts for this Project corresponding provisions for the benefit of City providing for retention and audit of records.

**10.7.3.** The right to access and examination of records stated herein and in any subcontracts shall survive termination or expiration of this Contract and continue until disposition of any mediation, claims, litigation or appeals related to this Project.

**10.7.4.** The City may cancel and terminate this Contract immediately for refusal by the Contractor to allow access by the City Manager or designees to any Records pertaining to work performed under this Contract that are subject to the provisions of Chapter 119, Florida Statutes.

**10.8. Authorized Representative.**

**10.8.1.** Before commencing the Work, Contractor shall designate a skilled and competent authorized supervisor and representative (“Authorized Representative”) acceptable to City to represent and act for Contractor and shall inform City, in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Contractor. Contractor shall keep City informed of any subsequent changes in the foregoing. Such representative shall be present or duly represented at the Project site at all times when Work is actually in progress. All notices, determinations, instructions and other communications given to the authorized representatives of Contractor shall be binding upon the Contractor.

**10.8.2.** The Authorized Representative, project managers, superintendents and supervisors for the Project are all subject to prior and continuous approval of the City. If, at any time during the term of this Contract, any of the personnel either functionally or nominally performing any of the positions named above, are, for any reasonable cause whatsoever, unacceptable to the City, Contractor shall replace the unacceptable personnel with personnel acceptable to the City.

**10.9. Taxes.** Contractor shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Price and any agreed variations thereof shall include all taxes imposed by law at the time of this Contract. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds the City harmless from any liability on account of any and all such taxes, levies, duties and assessments.

**10.10. Utilities.** Contractor shall, at its expense, arrange for, develop and maintain all utilities at the Project to perform the Work and meet the requirements of this Contract. Such utilities shall be furnished by Contractor at no additional cost to City. Prior to final acceptance of the Work, Contractor shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of this Contract.

**10.11. Safety.** Contractor shall be fully and solely responsible for safety and conducting all operations under this Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property and in full compliance with Occupational Safety and Health Act requirements and all other similar applicable safety laws or codes. Contractor shall continually and diligently inspect all Work, materials and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. Contractor shall have sole responsibility for implementing its safety program. City shall not be responsible for supervising the implementation of Contractor's safety program, and shall not have responsibility for the safety of Contractor's or its subcontractor's employees. Contractor shall maintain all portions of the Project site and Work in a neat, clean and sanitary

condition at all times. Contractor shall assure that subcontractors performing Work comply with the foregoing safety requirements.

**10.12. Cleaning Up.** Contractor shall, at all times, at its expense, keep its Work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Contractor shall promptly remove all of its equipment, construction materials, temporary structures and surplus materials not to be used at or near the same location during later stages of Work. Upon completion of the Work and before final payment is made, Contractor shall, at its expense, satisfactorily dispose of all rubbish, unused materials and other equipment and materials belonging to it or used in the performance of the Work and Contractor shall leave the Project in a neat, clean and safe condition. In the event of Contractor's failure to comply with the foregoing, the same may be accomplished by City at Contractor's expense.

**10.13. Liens.** Contractor shall not permit any mechanic's, laborer's or materialmen's lien to be filed against the Project site or any part thereof by reason of any Work, labor, services or materials supplied or claimed to have been supplied to the Project. In the event such a lien is found or claimed against the Project, Contractor shall within ten (10) days after notice of the lien discharge the lien or liens and cause a satisfaction of such lien to be recorded in the public records of Miami-Dade County, Florida, or cause such lien to be transferred to a bond, or post a bond sufficient to cause the Clerk of the Circuit Court of Miami-Dade County, Florida, to discharge such lien pursuant to Chapter 713.24, F.S. In the event Contractor fails to so discharge or bond the lien or liens within such period as required above, City shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, City shall thereafter have the right, but not the obligation, to retain out of any payment then due or to become due Contractor, one hundred fifty percent (150%) of the amount of the lien and to pay City's reasonable attorneys' fees and costs incurred in connection therewith.

**10.14. Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes, and (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

**10.15. Independent Contractor.** The Contractor is an independent contractor under the Contract. This Contract does not create any partnership nor joint venture. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

**10.16. Notices/Authorized Representatives.** Any notices required by this Contract shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Contract or such other address as the party may have designated by proper notice.

**10.17. Ownership and Access to Records and Audits.**

**10.17.1.** Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Contractor during the term of this Contract (“Work Product”) belong to the City. Contractor shall promptly disclose such Work Product to the City and perform all actions reasonably requested by the City (whether during or after the term of this Contract) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

**10.17.2.** Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Contract. The City Manager or her designee shall, during the term of this Contract and for a period of five (5) years from the date of termination of this Contract, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Contract. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. 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 Contract, and following completion of the Contract until the records are transferred to the City.

**10.17.3.** Upon request from the City’s custodian of public records, Contractor shall 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.

**10.17.4.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Contract are and shall remain the property of the City.

**10.17.5.** Upon completion of this Contract or in the event of termination by either party, any and all public records relating to the Contract in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City’s information technology systems. Once the public records have been delivered upon completion or termination of this Contract, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

**10.17.6.** Any compensation due to Contractor shall be withheld until all records are received as provided herein.

**10.17.7.** Contractor’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Contract by the City.

**10.17.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. 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 CUSTODIAN OF PUBLIC RECORDS: ERIKA GONZALEZ, MMC, CITY CLERK, 201 WESTWARD DRIVE, MIAMI SPRINGS, FL 33166, 305-805-5006, [gonzaleze@miamisprings-fl.gov](mailto:gonzaleze@miamisprings-fl.gov).**

**10.18. E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide proof of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participation-enrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

## **11. SPECIAL CONDITIONS**

The following provisions in this Section 10 supersede any other provisions contained in this Contract only to the extent of any conflict with same. These provisions are particular to a given transaction and are transaction specific:

### **11.1. Unsatisfactory Personnel.**

**11.1.1.** Contractor must at all times enforce strict discipline and good order among its employees and subcontractors at the Project(s) site(s) and must not employ on any Work any unfit person or anyone not skilled in the Work to which they are assigned.

**11.1.2.** The City may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor must respond to the City within five (5) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The City will make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

**11.2. Hours of Work.** Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, without the written consent of the City or governing jurisdiction. Work is anticipated to be performed Monday through Friday in accordance with the

requirements and limitations of applicable law including, without limitation, the City Code of Ordinances. The Contractor shall not perform Work beyond the time and days provided above without the prior written approval of the City.

**11.3. Maintenance of Traffic.** Whenever required by the scope of Work, by federal, state, or local law, or requested by the City to protect the public health, safety, and welfare, a Maintenance of Traffic (“MOT”) must be performed in accordance with the applicable FDOT Index Numbers (600 Series) and as further stated herein. The manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, FHWA), must be followed in the design, application, installation, maintenance and removal of all traffic control devices, warning devices and barriers necessary to protect the public and workmen from hazards with the Project limits. Pedestrian and vehicular traffic must be maintained and protected at all times. Prior to commencement of the Work, Contractor must provide the City with a proposed MOT plan for review. The City may require revisions to the proposed MOT plan. The MOT plan must be updated by the Contractor every two weeks. Failure to provide an MOT plan may result in the issuance of a stop work order. The Contractor will not be entitled to additional Contract Time for delays resulting from its failure to provide the required MOT plan.

**11.4. Royalties and Patents.** All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

**11.5. Substitutions.** Substitution of any specified material or equipment requires the prior written acceptance of the Project Consultant. It is the sole responsibility of the Contractor to provide sufficient information and documentation to the Project Consultant to allow for a thorough review and determination on the acceptability of the substitution. Approval of a substitution does not waive or mitigate the Contractor’s responsibility to meet the requirements of the Contract Documents. The City may require an adjustment in price based on any proposed substitution.

**11.6. Severe Weather Preparedness.** During such periods of time as are designated by the United States Weather Bureau or Miami-Dade County as being a severe weather event, including a hurricane watch or warning, the Contractor, at no cost to the City, must take all precautions necessary to secure any Work in response to all threatened storm events, regardless of whether the Contractor has been given notice of same, in accordance with the Miami-Dade County Code. Compliance with any specific severe weather event or alert precautions will not constitute additional work. Suspension of the Work caused by a threatened or actual storm event, regardless of whether the City has directed such suspension, will entitle the Contractor to additional Contract Time as non-compensable, excusable delay.

**11.7. American Rescue Plan Act Contract Conditions.** The Contractor acknowledges that the Work may be fully or partially funded utilizing Coronavirus State and Local Fiscal Recovery Funds allocated to the City pursuant to the American Rescue Plan Act (“ARPA”). Towards that end, the Contractor shall be required to comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by ARPA, as

further detailed in the ARPA Contract Conditions. If compliance with the ARPA Addendum is required, the City shall select this box: .

**11.8. Grant Funding.** The Contractor acknowledges that the Work may be fully or partially funded utilizing funds from the grants listed below (each a “Grant”). Accordingly, the Contractor warrants and represents that it has reviewed the terms and conditions for each Grant and will perform the Work in accordance with the terms and conditions of the Grant. If the Work will be funded utilizing Grant funds, the City shall select this box: .

Grant Title	Grant Agreement Exhibit
FDEP Grant Agreement No. C2206	Exhibit “D”
FDEP Grant Agreement No. LPA0192	Exhibit “E”

If the Work will be funded utilizing Grant funds, the City shall select this box: .

**11.9. DBE Contract Assurance.**

**11.9.1.** The City affirms it has encouraged women-owned, minority-owned, and disadvantaged businesses of the Project and be responsive to the opportunity of the award of this Contract.

**11.9.2.** Contractor, or any subcontractor performing Work under this Contract, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFE Part 26 in the award and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate.

**11.10. Scrutinized Companies.**

**11.10.1.** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

**11.10.2.** If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification;

or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

**11.10.3.** The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

**11.10.4.** As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.





**E-VERIFY AFFIDAVIT**

In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

**Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Entity Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Florida  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as Commissioned)

- \_\_\_\_\_ Personally known to me; or
- \_\_\_\_\_ Produced identification (Type of Identification: \_\_\_\_\_)
- \_\_\_\_\_ Did take an oath; or
- \_\_\_\_\_ Did not take an oath

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Name: \_\_\_\_\_

You are hereby notified that the Contract Times under the above Contract will commence to run on \_\_\_\_\_, 2023. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 2 of the Contract, the dates of Substantial Completion and completion and readiness for final payment are \_\_\_\_\_, 2023 and \_\_\_\_\_, 2023, \_\_\_/\_\_\_ days respectively.

Before you may start any Work at the site, Article 6 provides that you must deliver to the City (\_\_\_ check here if applicable, with copies to \_\_\_\_\_ and other identified additional insureds) Certificates of Insurance in accordance with the Contract Documents.

In addition, before you may start any Work at the site, you must: (add any additional requirements)

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

**CITY OF MIAMI SPRINGS**

By: \_\_\_\_\_  
J.C. Jimenez, ICMA-CM  
City Manager

**ACCEPTANCE OF NOTICE TO PROCEED**

**[INSERT NAME OF CONTRACTOR].**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**AMERICAN RESCUE PLAN ACT ADDENDUM TO  
CONTRACT FOR CONSTRUCTION  
BETWEEN  
CITY OF MIAMI SPRINGS  
AND  
ROADWAY CONSTRUCTION, LLC**

**THIS ARPA ADDENDUM** to the **CONTRACT FOR CONSTRUCTION** (the “ARPA Addendum”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date of this Addendum”), by and between **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”) and **ROADWAY CONSTRUCTION, LLC**, a Florida limited liability company (hereinafter, the “Contractor”). Collectively, the City and the Contractor are referred to as “Parties.”

**WHEREAS**, on [DATE], the City entered into a Contract for Construction with the Contractor for the construction of the Oakwood Drive and East Drive Stormwater Roadway Improvements Project (the “Project”), as further defined in the Agreement (the “Agreement”); and

**WHEREAS**, on March 11, 2021, the federal government adopted the American Rescue Plan Act (“ARPA”), which, among other things, provides local governments with emergency COVID-19 funding; and

**WHEREAS**, the City desires to utilize ARPA funding to implement the Project (the “Project”); and

**WHEREAS**, in order to utilize ARPA funding for the Project, the City desires to incorporate federally required contract provisions relating to ARPA into the Agreement, as set forth in this ARPA Addendum; and

**WHEREAS**, the City and Contractor wish to modify the terms of the Agreement in accordance with the terms and conditions set forth in this ARPA Addendum.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth herein, the City and Contractor agree as follows:<sup>1</sup>

**1. Recitals Incorporated.** The above recitals are true and correct and incorporated herein.

**2. American Rescue Plan Act Provisions.** The Agreement is hereby amended by adding the following provisions to the Agreement:

**2.1. Mandated Federal Agreement Conditions.**

**2.1.1.** In connection with the performance of this Agreement, Contractor acknowledges that compensation for the Project services under this Agreement shall be fully or partially

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<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words.

funded using the Coronavirus State and Local Fiscal Recovery Funds allocated to the City pursuant to the American Rescue Plan Act. As such, Contractor shall comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by the American Rescue Plan Act, including, but not limited to the following documents and guidelines, which are incorporated herein and made a part of this Agreement:

**ARPA Exhibit 1.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable and as may be amended from time to time;

**ARPA Exhibit 2.** The U.S. Department of the Treasury's Final Rule governing ARPA, dated January 27, 2022;

**ARPA Exhibit 3.** U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Award Terms and Conditions (Assistance Listing Number 21.019);

**ARPA Exhibit 4.** The U.S. Department of the Treasury's Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions, dated April 27, 2022;

**ARPA Exhibit 5.** American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement between the City and the State of Florida, Division of Emergency Management;

**ARPA Exhibit 6.** The U.S. Department of the Treasury's ARPA Compliance and Reporting Guidance, dated June 17, 2022; and

**ARPA Exhibit 7.** Assurances of Compliance with Civil Rights Requirements.

A copy of the above-referenced documents are available for inspection by the Contractor at the Office of the City Clerk and at the following City link: <https://www.miamisprings-fl.gov/finance/coronavirus-state-and-local-fiscal-recovery-funds-slfrf-program-part-american-rescue-plan>.

**2.1.2. Title VI Requirements.** Contractor acknowledges that the City has certified compliance with Title VI of the Civil Rights Act of 1964 to the U.S. Department of the Treasury on the form incorporated herein as ARPA Exhibit 7. Towards that end, Contractor shall ensure that performance of work in connection with this Agreement complies with the certifications and requirements contained in ARPA Exhibit 7 and shall also adhere to the following provisions:

- (1) The Contractor and its subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made

a part of this Agreement. Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

(2) Pursuant to 44 C.F.R. §§ 7 and 16, and 44 C.F.R. § 206.11, and that the Contractor shall undertake an active program of nondiscrimination in its administration of the Work under this Agreement.

**2.1.3. Americans with Disabilities Act Requirements.** The Contractor agrees to comply with the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and Local government services, and telecommunications. Additionally, Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 3601), which prohibits discrimination against individuals on the basis of discrimination under any program or activity under this Agreement.

**2.1.4. Age Discrimination Act of 1975.** Contractor shall comply with the requirements of 42 U.S.C. §§ 6101 et seq., as amended, and the Treasury’s implementing regulations (31 CFR Part 23), which prohibits the discrimination on the basis of age in programs or activities under this Agreement.

**2.1.5. Protections for Whistleblowers.**

(1) In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

(2) The list of persons and entities referenced in the paragraph above includes the following:

i.A Member of Congress or a representative of a committee of Congress.

ii.An Inspector General

iii.The Government Accountability Office.

iv.A Federal employee responsible for contract or grant oversight or management at the relevant agency.

v. An authorized official of the Department of Justice or other law enforcement agency.

vi. A court or grand jury.

vii. A management official or other employee of the Contractor, subcontractor, the State of Florida, or the City who has the responsibility to investigate, discover, or address misconduct.

(3) The Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

**2.1.6. Compliance with Immigration and Nationality Act (INA).** Contractor hereby certifies that it does not knowingly employ unauthorized alien workers in violation of the employment provisions contained in 8 USC Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)].

**2.1.7. Seat Belts Required.** Pursuant to Executive Order 13043, 62 FR 19217, Contractor shall adopt and enforce policies or programs that require employees to use seat belts while operating or traveling on vehicles owned, rented, or personally owned by the Contractor and its employees while performing the Work.

**2.1.8. Texting While Driving Ban.** Pursuant to Executive Order 13513, 74 FR 51225, Contractor shall adopt and enforce policies that ban text messaging while driving and workplace safety policies designed to decrease accidents caused by distracted drivers.

**2.1.9. Publication.** Contractor shall obtain approval from the City in writing prior to issuing any publications in connection with this Agreement. If approved by the City, the Contractor shall include the following language in any and all publications issued:

“This Project is [being funded/was supported] in part by federal award number (FAIN) [Insert Project FAIN] awarded to the City of Miami Springs by the U.S. Department of the Treasury.”

**2.1.10. Reporting Conflict of Interests.** Contractor agrees to disclose in writing to the City, U.S. Department of the Treasury, and the State of Florida, as appropriate, any potential conflicts of interest affecting the use of funds awarded under the American Rescue Plan Act in accordance with 2 CFR 200.112.

**2.2. Compliance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200).** In accordance with the Final Rule and other guidelines provided in connection with the American Rescue Plan Act, Contractor shall be subject to the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR Part 200, including, but not limited to:

**2.2.1. Equal Employment Opportunity Compliance.** During the performance of this Agreement, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
  - b. layoff or termination;
  - c. rates of pay or other forms of compensation; and
  - d. selection for training, including apprenticeship

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.



- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the U.S. Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**2.2.2. Contract Work Hours and Safety Standards Act Compliance.** During the performance of this Agreement, the Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 through 3708), including as follows:

- (1) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Agreement Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**2.2.3. Clean Air Act Compliance.** During the performance of this Agreement, the Contractor shall comply with the provisions of Clean Air Act (42 U.S.C. § 7401 et seq., as amended) and specifically agrees as follows:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Environmental Protection Agency Region 4 (Southeast) Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance in connection with this Agreement.

**2.2.4. Federal Water Pollution Control Act Compliance.** During the performance of this Agreement, the Contractor shall comply with the provisions of Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., as amended) and specifically agrees as follows:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Environmental Protection Agency Region 4 (Southeast) Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance in connection with this Agreement.

**2.2.5. Debarment and Suspension Compliance.** During the performance of this Agreement, the Contractor warrants that Contractor or its subcontractors are not debarred, suspended, or otherwise ineligible for contract awards under Executive Orders 12549 and 12689. Contractor shall comply with the following provisions:

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180, the U.S. Department of the Treasury's implementing regulations at 31 CFR Part 19, and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- (5) Contractor certifies that they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
  - ii. Have not, within a five (5)-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in

connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local); and
- iv. Have not, within a five (5)-year period preceding this Agreement, had one or more public transactions (Federal, State or Local) terminated for cause or default. If the Contractor is unable to obtain and provide such certification, then the Contractor shall attach an explanation to this Agreement as to why not.

**2.2.6. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended).** During the performance of this Agreement, the Contractor and its subcontractors shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended). Specifically, Contractor represents and warrants as follows:

- (1) No Funds received by the Contractor under this Agreement have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any monies, other than Funds received by Contractor under this Agreement, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The Contractor shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such sub-recipients shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**2.2.7. Copeland “Anti-Kickback” Act.** During the performance of this Agreement, the Contractor and its subcontractors shall comply with the provisions of the Copeland “Anti-Kickback” Act as follows:

- (1) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal government may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**2.2.8. Procurement of Recovered Materials.** Contractor shall comply with the provisions of 2 C.F.R.323, including Section 6002 of the Solid Waste Disposal Act. Towards that end, in the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (3) at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

**2.2.9. Domestic Preferences for Procurements.** To the greatest extent practicable, Contractor and its subcontractors shall provide preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, in accordance with 2 CFR 200.322, “Domestic preferences for procurements.”

**2.2.10. 2 CFR Subpart F – Audit Requirements.** Contractor shall assist the City in complying with the audit requirements under 2 CFR Subpart F – Audit Requirements (“Federal Audit Provisions”) and the reporting requirements of the U.S. Department of the Treasury’s Final Rule, as amended, and other guidelines issued in connection with the American Rescue Plan Act.

- (1) Contractor shall assist the City in complying with the Federal Audit Provisions by providing the City, the State of Florida, the U.S. Department of the Treasury, the Treasury Office of the Inspector General, the Government Accountability Office, or other federal government entities, and any of their duly authorized representatives, access to personnel, accounts, books, records, supporting documentation, and other information relating to the performance of the Agreement or the Work (“Documentation”) necessary to complete federal audits. Contractor shall promptly assist the City in the event Documentation must be supplemented to address audit findings or other federal inquiries.
- (2) Contractor shall keep all Documentation up-to-date throughout the performance of this Agreement and the Work. Contractor shall provide the City with all Documentation for each fiscal year by October 1 of each year or within five days of the completion of the Work, whichever occurs first. Contractor shall assist the City in complying with additional guidance and instructions issued by the U.S. Department of the Treasury governing the reporting requirements for the use of American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds.

**3. Conflict; Addendum Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this ARPA Addendum and the terms and provisions of the Agreement, the terms and provisions of this ARPA Addendum shall control.

**4. Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

**5. Defined Terms.** All initial capitalized terms used in this ARPA Addendum but not otherwise defined herein shall have the same meaning ascribed thereto in the Agreement.

**6. Counterparts.** This ARPA Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this ARPA Addendum shall have the same force and effect as an original hereof.

**[Remainder of page intentionally left blank.  
Signature pages follow.]**



**RESOLUTION NO. 2023-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, PROVIDING FOR THE FIRST BUDGET AMENDMENT TO THE FISCAL YEAR 2023-2024 GENERAL FUND, SPECIAL REVENUE, AND CAPITAL PROJECTS FUND BUDGETS BY RE-APPROPRIATING RESERVED FUND BALANCES TO FUND OPEN ENCUMBRANCES THROUGH SEPTEMBER 30, 2023; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 25, 2023, the City of Miami Springs (the “City”) Council adopted Resolution No. 2023-4122 adopting the City’s fiscal year 2023-2024 Budget (the “Budget”); and

**WHEREAS**, it is a generally accepted accounting practice of municipal government to re-appropriate reserved equity accounts to fund open encumbrances from the prior fiscal year immediately after the beginning of the new fiscal year; and

**WHEREAS**, the City’s Finance Department has identified \$1,242,922 in valid outstanding encumbrances/purchase orders as of September 30, 2023, which represent financial obligations of the City as of the close of the fiscal year ending September 30, 2023; and

**WHEREAS**, the City Council has determined that it is appropriate to approve and authorize the re-appropriation of reserved equity accounts to the fiscal year 2023-2024 General Fund, Special Revenue and Capital Projects Funds in order to fund open encumbrances from the City’s prior fiscal year as provided in Exhibit “A” attached hereto and incorporated herein; and

**WHEREAS**, Section 166.241, Florida Statutes requires the governing body of a municipality to adopt a budget each fiscal year and authorizes the governing body of each municipality at any time within a fiscal year or within 60 days following the end of the fiscal year to amend a budget for that year.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.



**Section 2. First Amendment to Fiscal Year 2023-2024 Budget.** That the City Council hereby authorizes and approves the amended budgetary appropriations as described in this Resolution and reflected on Exhibit "A" attached hereto and incorporated herein in order to provide for the re-appropriation of reserved fund balances for open purchase order obligations through September 30, 2023 in the amount of \$1,242,922.

**Section 3. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Jacky Bravo	_____
Councilmember Dr. Walter Fajet, Ph.D.	_____
Councilmember Jorge Santin	_____
Councilmember Dr. Victor Vazquez, Ph.D.	_____
Mayor Maria Puente Mitchell	_____

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY

**EXHIBIT A**  
**FIRST AMENDMENT TO FISCAL YEAR 2023-2024 BUDGET**

**EXHIBIT "A"**

**City of Miami Springs  
FY 2023-24 Budget Amendment  
All Operating Funds**

<b>Fund/Classification</b>	<b>Adopted Budget</b>	<b>Amendment No. 1</b>	<b>Ref</b>	<b>Amended Budget</b>
<b>General Fund</b>				
<b>Revenues</b>				
Taxes	\$10,539,688			\$10,539,688
Excise Taxes	2,917,946			2,917,946
Licenses & Permits	214,070			214,070
Intergovernmental Revenues	2,393,728			2,393,728
Charges for Services	3,747,957			3,747,957
Fines & Forfeitures	1,385,000			1,385,000
Miscellaneous	288,252			288,252
Transfers from other funds	408,210			408,210
Fund Balance	1,110,278	\$147,735	1	1,258,013
<b>Total General Fund</b>	<b>\$23,005,129</b>	<b>\$147,735</b>		<b>\$23,152,864</b>
<b>Expenditures</b>				
City Council	169,842			169,842
City Manager	527,126			527,126
City Clerk	370,153			370,153
City Attorney	253,755			253,755
Human Resources	344,586			344,586
Finance-Administration	695,332			695,332
Finance-Professional Services	196,252	453	1	196,705
Information Technology	420,808	6,007	1	426,815
Planning	256,427	5,215	1	261,642
Police	9,200,825	26,539	1	9,227,364
Code Enforcement	357,056	580	1	357,636
Public Works	2,697,936			2,697,936
Recreation & Culture	3,136,943	92,954	1	3,229,897
Golf Operations	2,641,415	15,987	1	2,657,402
Transfers to other funds	1,736,673			1,736,673
Budgeted Increase to reserves	0			0
<b>Total General Fund</b>	<b>23,005,129</b>	<b>147,735</b>		<b>23,152,864</b>
Sanitation Operations	2,785,174			2,785,174
Stormwater Operations	470,236			470,236
<b>Total Enterprise Funds</b>	<b>3,255,410</b>	<b>\$0</b>		<b>\$3,255,410</b>
<b>Special Revenue &amp; Capital Projects</b>				
Road & Transportation	919,373	\$58,300	1	\$977,673
Senior Center Operations	1,559,099			1,559,099
Capital Projects	0	1,036,353	1	1,036,353
Building Operations	1,176,175	534	1	1,176,709
Law Enforcement Trust	173,800			173,800
<b>Total Special Revenue &amp; Capital Projects Funds</b>	<b>3,828,447</b>	<b>\$1,095,187</b>		<b>\$4,923,634</b>
Debt Service	1,805,985			\$1,805,985
<b>Total Debt Service</b>	<b>1,805,985</b>			<b>\$1,805,985</b>
<b>GRAND TOTAL ALL FUNDS</b>	<b>\$31,894,971</b>	<b>\$1,242,922</b>		<b>\$33,137,893</b>

**Legend:**

1) \$1,242,922 in encumbrances rolled forward from prior fiscal year.



# AGENDA MEMORANDUM

**Meeting Date:** October 23, 2023

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** Juan Carlos Jimenez, City Manager

**From:** Chris Chiocca, Finance Director

**Subject:** External Auditor Contract Amendment

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Recommendation by the Finance Department that Council approve an amendment to the existing agreement with Caballero Fierman Llerena & Garcia, LLP, for external auditing services to provide the option for an additional on year term of the agreement (Option Year 5: September 1, 2023 to August 30, 2024) and approve an expenditure in an amount not to exceed \$42,500 for the financial statement audit and \$6,500 for a Federal or State Single audit (as needed) for the fiscal year ending September 30, 2023.

## **Discussion:**

The City has a Professional Services Agreement (the "Agreement") with Caballero Fierman Llerena & Garcia, LLP (the "Auditors") that was approved by Council in August 2018. The Agreement originally provided for a one year term beginning September 1, 2018 and ending on August 30, 2019 with four additional one-year options (Option Year 1: September 1, 2019 to August 30, 2020; Option Year 2: September 1, 2020 to August 30, 2021; Option Year 3: September 1, 2021 to August 30, 2022; and Option Year 4: September 1, 2022 to August 30, 2023 ). The audit fees during the one year term and all option years were \$31,000 for audit fees and \$3,500 for single audits.

The proposed Amendment to the Agreement adds one additional option year (Option Year 5: September 1, 2023 to August 30, 2024) at the rate of \$42,500 for audit fees and \$6,500 for single audits. Providing this additional option year will allow the City to maintain continuity of service and deliver the required annual financial audit in a timely fashion.

The City will be issuing an RFP in fiscal year 2023-2024 for future external auditing services and an agreement will be presented to Council for approval at a future meeting date.

**RESOLUTION NO. 23-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CABALLERO FIERMAN LLERENA & GARCIA, LLP FOR THE CITY'S ANNUAL FINANCIAL AUDIT SERVICES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Section 218.39, Florida Statutes requires that the City of Miami Springs (the "City") provide annually for an audit of its financial statements; and

**WHEREAS**, in accordance with Section 218.391, Florida Statutes, the City undertook a selection process to select a firm to perform the required financial audit; and

**WHEREAS**, on April 9, 2018, the City Council adopted Resolution No. 2018-377 establishing an auditor selection committee pursuant to Section 218.391, Florida Statutes; and

**WHEREAS**, on May 17, 2018, the City issued Request for Proposals No. 02-17/18 ("RFP") for the financial audits; and

**WHEREAS**, the City received three (3) proposals by the RFP deadline of June 14, 2018; and

**WHEREAS**, the three firms' proposals were evaluated and ranked by the City's Auditor Selection Committee ("Committee"); and

**WHEREAS**, the Committee recommended to the City Council three firms deemed to be the most highly qualified to perform the required services after considering the factors established in Section 218.391(3)(a), Florida Statutes; and

**WHEREAS**, in accordance with Section 218.391, Florida Statutes, the City Council considered the Committee's recommendation, selected the top-ranked firm, Caballero Fierman Llerena & Garcia, LLP ("Auditor"), to conduct the City's annual financial audit, and on August 13, 2018 adopted Resolution No. 18-3799, approving an agreement (the "Agreement") with the Auditor; and

**WHEREAS**, for continuity of service and to allow the City the time to conduct a new solicitation process, the City wishes to increase the number of option years available

under the Agreement from four (4) one (1) year extensions to five (5) one (1) year extensions; and

**WHEREAS**, the City wishes to amend the Agreement substantially in accordance with the terms and conditions of the Amendment attached hereto as Exhibit "A" to provide for the additional option years and compensation amounts during the additional option years (the "First Amendment"); and

**WHEREAS**, the City Council authorizes the City Manager to execute the First Amendment, in substantially the form attached hereto as Exhibit "A", with the Auditor and take action in furtherance hereof; and

**WHEREAS**, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Approval.** That the City Council hereby approves the First Amendment attached hereto as Exhibit "A" with the Auditor.

**Section 3. Authorization.** That the City Manager is hereby authorized, on behalf of the City, to execute the First Amendment in substantially the form attached hereto as Exhibit "A" with the Auditor, subject to approval by the City Attorney as to form, content, and legal sufficiency.

**Section 4. Implementation.** That the City Manager is hereby authorized to take such further action as may be necessary to implement the purpose and provisions of this Resolution, including the expenditure of budgeted funds.

**Section 5. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Jacky Bravo \_\_\_\_\_  
Councilmember Dr. Walter Fajet, Ph.D. \_\_\_\_\_  
Councilmember Jorge Santin \_\_\_\_\_

Councilmember Dr. Victor Vazquez, Ph.D.  
Mayor Maria Puente Mitchell

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

PASSED AND ADOPTED this 23<sup>rd</sup> day of October, 2023.

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY

**AMENDMENT NO. 1  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MIAMI SPRINGS, FLORIDA  
AND  
CABALLERO FIERMAN LLERENA & GARCIA, LLP  
PURSUANT TO REQUEST FOR PROPOSALS NO. 02-17/18**

**THIS FIRST AMENDMENT TO AGREEMENT** (“First Amendment”) is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”) and **CABALLERO FIERMAN LLERENA & GARCIA, LLP** (formerly known as Albern Caballero & Fierman, LLP) (“Auditor”), who shall collectively be referred to as the “Parties.”

**WHEREAS**, Section 218.39, Florida Statutes requires that the City provide annually for an audit of its financial statements; and

**WHEREAS**, in accordance with Section 218.391, Florida Statutes, the City undertook a selection process to select a firm to perform the required financial audit; and

**WHEREAS**, on May 17, 2018, the City issued Request for Proposals No. 02-17/18 (“RFP”); and

**WHEREAS**, on August 13, 2018, the City Council adopted Resolution No. 2018-3799 selecting Auditor to audit the City’s financial statements for the fiscal year ending September 30, 2018 and for any fiscal year thereafter if the City renewed the agreement; and

**WHEREAS**, the City and the Auditor entered into an Agreement dated September 7, 2018 (“Agreement”) for the provision of auditing services as outlined in Request for Proposals No. 14-13 – Professional Auditing Services; and

**WHEREAS**, the City wishes to modify the Agreement in accordance with the terms and conditions set forth in this First Amendment; and

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the City and the Auditor agree as follows: <sup>1</sup>

1. **Recitals Incorporated**. The above recitals are true and correct and incorporated herein.
2. **Amendment of Section 5 of the Agreement**. Section 5 of the Agreement is amended as follows:

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<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words.



**Section 5. Compensation.** Auditor shall deliver an invoice to City no more often than once per month detailing Services completed and the amount due to Auditor under this Agreement. Fees shall be paid in arrears each month, pursuant to Auditor's invoice, which shall be based upon the percentage of work completed for each task invoiced. The City shall pay the Auditor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the City Manager. The Auditor shall be compensated in accordance with the following compensation schedule:

- a. Year 1: \$31,000.00 (Audit Fees); \$3,500.00 (Single Audit Fee, if required)
- b. Year 2 (Option):\$31,000.00 (Audit Fees); \$3,500.00 (Single Audit Fee, if required)
- c. Year 3 (Option): \$31,000.00 (Audit Fees); \$3,500.00 (Single Audit Fee, if required)
- d. Year 4 (Option): \$31,000.00 (Audit Fees); \$3,500.00 (Single Audit Fee, if required)
- e. Year 5 (Option): \$31,000.00 (Audit Fees); \$3,500.00 (Single Audit Fee, if required)
- f. Year 6 (Option): \$42,500.00 (Audit Fees); \$6,500.00 (Single Audit Fee, if required)

3. **Amendment of Section 7 of the Agreement.** Section 7 of the Agreement is amended as follows:

**Section 7. Term of Agreement; Renewals.** This Agreement shall be for a period of one (1) year beginning on September 1, 2018 and ending on August 30, 2019. The City may renew the Agreement for up to ~~four (4)~~ five (5) additional one (1) year terms. Renewals are contingent upon satisfactory performance by the Auditor and availability of funds.

4. **Conflict; Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this First Amendment and the terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control.
5. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.
6. **Defined Terms.** All initial capitalized terms used in this First Amendment but not otherwise defined herein shall have the same meaning ascribed thereto in the Agreement.
7. **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this First Amendment shall have the same force and effect as an original hereof.





# AGENDA MEMORANDUM

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**Meeting Date:** October 16, 2023

**To:** The Honorable Mayor Mitchell and Members of the City Council

**Via:** JC Jimenez, City Manager

**From:** Erika Gonzalez-Santamaria, City Clerk

**Subject:** Canceling the November 27th and December 26th Council Meetings

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**Recommendation:** Request that Council consider canceling the Regular Council meetings scheduled for Monday, November 27th and Monday, December 26th<sup>th</sup>.

**Discussion/Analysis:** Historically, the City Council has canceled the second meetings in November and December of each year. The Thanksgiving holiday falls on Thursday, November 23rd and City Hall is closed the day after Thanksgiving, Friday, November 24th. This year, the second meeting in December falls on Monday, December 25<sup>th</sup> (City Hall is closed for the Christmas holiday). Therefore, it is requested that the City Council cancel the Monday, November 27th and Tuesday, December 26<sup>th</sup> meetings, resuming the regular schedule in January 2024.

**Submission On:** 10/16/2023

**Submitted by:**

Department: City Clerk

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Attachments: X No

Budgeted/Funded X No