

**CITY OF NORTH MIAMI  
PROFESSIONAL SERVICES AGREEMENT  
(RFP #66-16-17 Disaster Debris Monitoring Services)**

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is entered into this day of \_\_\_\_\_, 2018, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125<sup>th</sup> Street, North Miami, Florida (“City”), and **Atkins North America, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal business office at 4030 West Boy Scout Blvd., Suite 700, Tampa, FL 33607 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”.

**RECITALS**

**WHEREAS**, on February 22, 2018, the City advertised *Request for Proposal #66-16-17 Disaster Debris Monitoring Services* (“RFP”), seeking a qualified and experienced contractor to provide the City with disaster related debris monitoring services to support the oversight and management of debris recovery and removal process and other related services, including damage assessment, training, emergency planning, and facilitating lines of communication between the City and FEMA, other federal agencies, the State of Florida, and Miami-Dade County (“Services”); and

**WHEREAS**, Atkins North America, Inc. was evaluated by City administration as the sole responsive firm which presented those qualifications and references most advantageous to the City; and

**WHEREAS**, Atkins North America, Inc., has expressed its capability, expertise and willingness to perform the Services in accordance with the terms, conditions, requirements and specifications contained in the RFP; and

**WHEREAS**, on June 12, 2018, the Mayor and City Council of the City of North Miami, Florida, passed and adopted a resolution approving the selection of Atkins North America, Inc., as the Contractor and authorized the City Manager to execute an agreement for the provision of Services.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

**ARTICLE 1 - RECITALS**

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

**ARTICLE 2 - CONTRACT DOCUMENTS**

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 City of North Miami *Request for Proposal #66-16-17 Disaster Debris Monitoring Services*, attached hereto by reference;

2.1.2 Contractor's response to the RFP ("Proposal"), attached hereto by reference;

2.1.3 Contractor's Fee Schedule, attached hereto as Exhibit A;

2.1.4 Any additional documents which are required to be submitted by Contractor pursuant to this Agreement and RFP.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The RFP.

2.3 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the RFP prior to Contractor submitting its Bid Submittal or the right to clarify same shall be waived.

### **ARTICLE 3 – TERM OF AGREEMENT**

3.1 The initial term of this Agreement shall be a period of three (3) years commencing on June 1, 2011 ("Initial Term"), unless terminated earlier by either Party.

3.2 Following the Initial Term, the City shall have an option to renew for two (2) additional one (1) year periods, on a year by year basis, in writing and with the same terms and conditions.

3.3 The City reserves the right to request and consider yearly price quotations from Contractor, prior to each renewal period.

3.4 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to timely perform Services or any portion thereof, the City may request that the Contractor, within a reasonable period of time, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

### **ARTICLE 4 - COMPENSATION**

4.1 Payment to Contractor for Services to the City will be made in accordance with the terms of the RFP and Contractor's Fee Schedule, attached hereto.

4.2 Contractor shall be paid within thirty (30) days of receipt of invoice the total shown due, provided the City has accepted Contractor's performance.

4.3 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

#### **ARTICLE 5 - SCOPE OF SERVICES**

5.1 Contractor shall provide the Services set forth in the Contract Documents and in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession. The City reserves the right to issue directives as necessary to facilitate the flow of work or to minimize any conflict or hazard with public operations.

5.2 Contractor shall provide Services under the direction of and to the satisfaction of the City. The City shall make decisions on all claims regarding the interpretation of the Contract Documents and on all other matters relating to the execution and progress of the Services rendered by Contractor.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.4 Pursuant to Contract Documents, Contractor shall comply with the City's Local Preference Code requirements by assigning no less than ten percent (10%) of the total value of the Services undertaken on an annual basis, to the local firm of: AR Toussaint & Associates, 620 NE 126<sup>th</sup> Street, North Miami, FL 33161.

#### **ARTICLE 6 - INDEPENDENT CONTRACTOR**

6.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

#### **ARTICLE 7 - CONFLICTS OF INTEREST**

7.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

7.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on work assigned to the Contractor, except as fully disclosed and approved by the City. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

**ARTICLE 8 - DEFAULT**

8.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within five (5) business days after receiving notice of default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

**ARTICLE 9 - TERMINATION RIGHTS**

9.1 The Parties shall have the right to terminate this Agreement at any time, with or without cause, upon ten (10) days written notice to the other Party. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

**ARTICLE 10 - NOTICES**

10.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

To Contractor: Atkins North America, Inc.  
Attn: Ernest Edgar, Registered Agent  
4030 West Boy Scout Blvd., Suite 700  
Tampa, FL 33607

To City: City of North Miami  
Attn: City Manager  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

With a copy to: City Attorney  
City of North Miami  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

10.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

10.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

#### **ARTICLE 11 - PUBLIC RECORDS**

11.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

#### **ARTICLE 12 - INDEMNIFICATION**

12.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

12.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing services under this Agreement. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

12.3 Contractor has visited the worksite and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

12.4 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

#### **ARTICLE 13 - INSURANCE**

13.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage specified in the RFP and provide that the City is an additional named insured, with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the RFP and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect.

Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

13.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

#### **ARTICLE 14 - MISCELLANEOUS PROVISIONS**

14.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

14.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

14.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

14.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

14.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

14.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

14.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

14.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

14.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

14.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

14.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

14.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

14.13 All other terms, conditions and requirements contained in the RFP, which have not been modified by this Agreement, shall remain in full force and effect.

14.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

*[The remainder of this page is intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Atkins North America, Inc., a Florida Profit Corporation:

Corporate Secretary or Witness:

**“Contractor”**

By: DocuSigned by:  
Ernie Edgar  
0B4F5FCC4F99434...  
Print Name: Ernie Edgar  
Date: 8/8/2018

By: DocuSigned by:  
Charlotte Maddox  
5509D6D53AFC41A...  
Print Name: Charlotte Maddox  
Date: 8/8/2018

ATTEST:

City of North Miami, a Florida municipal corporation: **“City”**

By: DocuSigned by:  
Michael A. Etienne  
2C7010872EE8414...  
Michael A. Etienne  
City Clerk

By: DocuSigned by:  
Larry Spring  
C23984DEA2724CF...  
Larry M. Spring, Jr.  
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: DocuSigned by:  
Jeff P. H. Cazeau  
3C2C76D6D7D5464...  
Jeff P. H. Cazeau  
City Attorney