

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of January 27, 2021, by and between the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the “CRA”) having an address at 12330 N.E. 8th Avenue, North Miami, Florida 33161, and **MILLER ELECTRIC COMPANY**, a Florida profit corporation (the “Contractor”) having an address at 6805 Southpoint Parkway, Jacksonville, Florida 32216.

## **RECITALS**

1. The CRA desires to engage the Contractor for provision of the services as set forth in the Scope of Work (as defined below), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties do hereby agree as follows:

**1. General Intent.** The intent of this Agreement is to set forth the rights and obligations of the parties with respect to the provision by the Contractor to the CRA to provide all necessary equipment, labor, and materials for the purchase, installation, configuration and programming of a License Plate Reader System for the City of North Miami Police Department pursuant to that certain RFP No. 13-17-18 issued by the City of North Miami on behalf of the CRA (the “Solicitation”) as set forth in that certain proposal in response to the Solicitation attached hereto as Exhibit “A” and by this reference made a part hereof (the “Proposal”). The parties acknowledge and agree that the Solicitation and Proposal contain certain terms and conditions that are incorporated into this Agreement; provided, however, in the event there is any conflict between the terms and conditions of this Agreement and the Solicitation, the more stringent terms and conditions shall control. The Solicitation contains a Scope of Work and references the Plans and Specifications, which shall mean and be referred to as the “Scope of Work” for purposes of this Agreement.

### **2. Services and Responsibilities**

2.1 The Contractor hereby agrees to perform the services described in the Proposal for the not to exceed fee set forth in Section 4 below. The Contractor shall be solely responsible for the satisfactory and complete execution of the Scope Work. The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Scope of Work. The Scope of Work shall generally be performed at the direction of the CRA and completed in accordance with the time frames set forth in Section 6 of the Proposal. In the event of any delay caused or claimed by the Contractor to be caused in whole or in part by the CRA, an extension of time shall be the Contractor’s sole remedy and the Contractor hereby waives any claims for delay damages.

2.2 The Contractor hereby represents and warrants to the CRA that it possesses (a) the skills necessary to perform the Scope of Work as required by this Agreement and (b) all necessary licenses to perform the Work as a general contractor including, but not limited to, a General Contractor's License issued by the State of Florida, as well as any licenses required by the State of Florida, Miami-Dade County, and the City of North Miami.

2.3 Any work performed by the Contractor that fails to meet the requirements of this Agreement, or otherwise is defective or contains errors, conflicts, or omissions, will be promptly corrected by the Contractor at no cost to CRA. The Contractor will promptly reimburse CRA for any and all damages, including fines and incidental damages, without limitation, resulting from the defective work.

2.4 The Contractor shall perform the Scope of Work in a manner that complies with any governing codes, laws, or ordinances including the Florida Building Code. Although the CRA shall review all work completed by the Contractor, the CRA shall not be responsible to the Contractor for any failure to comply with any governing codes, laws, or ordinances including the Florida Building Code.

2.5 The Contractor shall maintain one record set of all plans and specifications in good order and marked currently to record all changes made during installation and an accurate location of all portions of the work sufficient to prepare accurate as-built plans and specifications. The as-built plans and specifications shall provide as much accuracy as possible, and submission of same to CRA upon Final Completion shall be a condition precedent to the final payment.

2.6 Contractor shall report to the CRA Executive Director. During the conduct of the performance of its services, Contractor shall schedule regular meetings with the CRA Executive Director or his designee to discuss the progress of the work.

2.7 Contractor hereby represents to the CRA, with full knowledge that CRA is relying upon these representations when entering into this Agreement with Contractor, that Contractor has the professional expertise, experience and manpower to perform the services to be provided by Contractor pursuant to the terms of this Agreement. Contractor shall maintain during the term of this Agreement all necessary licenses and qualifications required by applicable law.

2.8 The Contractor shall pay when due all sales, consumer, use, and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Work.

2.9 The Contractor may not substitute general or specified products or materials of like quality without the written consent of the CRA in each instance. Contractor shall make no modifications to dimensions, within normal construction tolerances, without prior written consent from the CRA in each instance.

2.10 The Contractor warrants to the CRA that materials and equipment furnished under this Agreement will be of good quality and new, that the Scope of Work will be free from defects not inherent in the quality required or permitted, and that the Scope of Work will conform

to the requirements of the Contract Documents and applicable laws. Any portion of the Scope of Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. All defective portions of the Scope of Work shall be replaced or repaired at Contractor's sole cost and expense.

2.11 Contractor agrees to repair, at Contractor's own cost and expense any portion of the Scope of Work that may prove to be defective.

2.12 Upon final completion and as a condition to the final payment, Contractor shall deliver to the CRA all manufacturer's warranties, if any, covering the consumer products to be conveyed to the CRA herein.

2.13 The Contractor represents that Contractor has made any and all investigations essential to a full understanding of any difficulties which may be encountered at the sites. Execution of this Agreement shall constitute acceptance by the Contractor of existing site conditions as a part of the requirements for this Scope of Work; it being expressly understood and agreed that the Contractor shall not be entitled to any additional compensation and/or fees for any pre-existing conditions including, but not limited to, concealed or unknown conditions at the project sites which may in any way affect the Scope of Work. Contractor has specifically examined the project sites and affirms that it is fit to receive the Scope of Work.

**3. Relationship of the Parties.** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the CRA to cooperate with the CRA and exercise the Contractor's skill and judgment in furthering the interests of the CRA; to furnish efficient business administration and supervision, and to perform the Scope of Work in an expeditious and economical manner consistent with the CRA's interests. The CRA agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of this Agreement.

**4. Compensation; Method of Payment; Term of Agreement.**

4.1 Compensation for the services provided by the Contractor to the CRA for the scope of work shall be based on and paid in accordance with the Bill of Materials set forth in the Proposal and by this reference made a part hereof in the not to exceed amount of One-Hundred Fifty-Six Thousand Three-Hundred Forty-Seven and 00/100 Dollars (\$156,347.00). The fees in the not to exceed amount of One-Hundred Fifty-Six Thousand Three-Hundred Forty-Seven and 00/100 Dollars (\$156,347.00) represent and contain all amounts due and payable for the services provided by the Contractor as set forth in the Scope of Work including any out-of-pocket and third party costs which may be incurred and/or paid by the Contractor. Payment by the CRA of the fees for the Scope of Work performed shall be deemed full compensation to the Contractor for the performance of this Agreement. In the event additional labor, materials, costs or expenses are necessary to complete the Work in excess of One-Hundred Fifty-Six Thousand Three-Hundred Forty-Seven and 00/100 Dollars (\$156,347.00), such amounts shall be the sole responsibility of Contractor; it being acknowledged and agreed that the not to exceed amount for the Scope of the Work shall be the maximum amount the CRA shall be required to pay for the Scope of Work unless the such amount was increased or decreased by a Change Order.

4.2 The Contractor shall submit to the CRA a written invoice for compensation. Each invoice shall include a detailed billing statement for services rendered and any other supporting documentation as reasonably requested by the CRA. Notwithstanding the foregoing, as a condition to each progress payment, if applicable, the Contractor shall have furnished CRA with a partial lien waiver and release signed by Contractor, conditioned upon payment, for all Work performed that is included in the current invoice, in the form set forth in Florida Statutes Chapter 713, and shall have furnished CRA with partial lien waivers and releases signed by all persons or entities giving Notice to Owner for the furnishing any labor or material, equipment, services, and materials for the project and for all Work performed by same that is included in the respective prior invoice. With respect to the procedures for payment, the CRA and the Contractor agree to comply with and be bound by the provisions of Part VII, Chapter 218, Florida Statutes, entitled the Local Government Prompt Payment Act.

4.3 Notwithstanding the foregoing or anything in this Agreement to the contrary, neither any progress payment or the final payment shall be due or owing to the Contractor until all of the requirements of this Agreement and Chapter 713, Florida Statutes, have been satisfied.

**5. Changes in Scope of Work.** The CRA may request changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement including the approval of the CRA Board.

**6. Termination.**

6.1 Termination by the Contractor. The Contractor may terminate this Agreement if the CRA fails to make a payment as required by this Agreement followed by written notice thereof from the Contractor to the CRA and the CRA's continued failure to make such payment for fifteen (15) days following the receipt of such notice. If the Contractor terminates this Agreement as set forth in the previous sentence, the Contractor shall be entitled to recover from the CRA payment for the Scope of Work executed up to the date of termination but shall not be entitled to any other damages including, but not limited to, consequential and/or punitive damages. The Contractor hereby waives any claims for consequential and/or punitive damages in connection with, related to or arising from this Agreement. Any termination or purported termination by the Contractor for any reason other than the CRA's nonpayment shall be void thereby entitling the CRA to its rights and remedies available at law and in equity.

6.2 Termination by the CRA for Cause. The CRA may terminate this Agreement if the Contractor:

6.2.1 Persistently or repeatedly refuses or fails to follow the CRA's directions relative to the performance of the Scope of Work including, but not limited to, failing to perform the Scope of Work or any portion thereof within agreed upon time frames;

6.2.2 Persistently disregards laws, ordinances, rules, regulations, or orders

of a public authority having jurisdiction; or

6.2.3 Otherwise materially breaches any provision of the Agreement Documents.

When any of the above reasons exist, the CRA may without prejudice to any other rights or remedies and after giving the Contractor seven (7) days' written notice, terminate this Agreement and the employment of the Contractor. The Contractor shall not be entitled to receive payment for the Scope of Work completed until the remainder of the Scope of Work is finished and, in addition to any other rights available to the CRA at law or in equity, the Contractor shall be liable to the CRA for all reasonable excess completion costs and costs to correct as a result of said termination.

6.3 Termination by the CRA for Convenience. Notwithstanding anything in this Agreement to the contrary, the CRA shall have the right, for whatever reason and in its sole discretion, to terminate this Agreement without penalty or liability by providing the Contractor with seven (7) days' written notice thereof. Upon such termination, this Agreement shall be null and void, except that the Contractor shall be entitled to payment for the Scope of Work executed up to the date of termination. Any of the Contractor's then outstanding and/or unfulfilled duties and/or obligations under this Agreement accruing prior to such termination shall survive the termination of this Agreement. The Contractor acknowledges and agrees that the Contractor shall not be entitled to, and hereby waives any claims for, any damages in the event that the CRA exercises its termination right hereunder including, but not limited to, any consequential or punitive damages.

7. Insurance. The Contractor shall purchase and maintain insurance as follows.

7.1 Worker's Compensation Insurance coverage in accordance with Florida statutory requirements.

7.2 Commercial General Liability Insurance coverage with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which policy shall include coverage of the contractual liabilities contained in this Agreement.

Certificates of insurance from insurers authorized to do business in the state(s) where the work is being performed shall be delivered to the CRA upon execution of this Agreement. Only with respect to commercial general liability insurance, the certificates shall (a) name the CRA and the City of North Miami as additional insureds and (b) contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the CRA and the City of North Miami. Failure of the Contractor to obtain and maintain required insurance shall be grounds for termination of this Agreement by the CRA. The Contractor shall require any subcontractors to provide liability insurance with the same insurance coverage as set forth above.

8. Indemnification. In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the CRA, its members, managers, officers, employees, consultants,

and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Scope of Work. The foregoing indemnity is limited to \$1,000,000 per occurrence, which monetary limitation on the extent of the indemnification both parties acknowledge and agree bears a reasonable commercial relationship to the Agreement; provided, however, that the Contractor's indemnity obligations hereunder are not limited by the availability of insurance proceeds. In the event that any claims are brought or actions are filed against the CRA with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

## **9. Miscellaneous**

9.1 Ownership of Documents. All plans, specifications, shop drawings, as well as any and all documents prepared by the Contractor pursuant to or in connection with this Agreement are and shall remain the exclusive property of the CRA. Upon request of the CRA and/or upon the termination or completion of this Agreement, Contractor shall promptly deliver to the CRA all or any portion of the above referenced documents including the tapes or discs relating thereto. Contractor further acknowledges that CRA may post any of such documents on the CRA's website. Such documents may be posted by CRA without the prior authorization of Contractor. No additional fee or compensation will be paid to Contractor by CRA for such posting.

9.2 Records. The Contractor shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct accurate records with respect to this engagement. Such books and records will be available at all reasonable times for examination and audit by the CRA and shall be kept for a period of six (6) years after the completion of all work to be performed pursuant to this Agreement, unless contacted by the CRA and advised such records must be kept for a longer period. The Contractor shall further be required to respond to the reasonable inquiries of any successor Contractor and allow any successor Contractor to review the Contractor's working papers related to matters of continuing accounting, reporting, or auditing significance. Incomplete or incorrect entries in such books and records will be grounds for disallowance by the CRA of any fees or expenses based upon such entries.

9.3 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Contractor is an independent contractor under this Agreement and not the CRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution act, the Social Security Act, the Federal Unemployment Tax Act, the provision of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The Contractor shall retain sole

and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the CRA, that it has full opportunity to find other business, that it has to make its own investment in its business, and that it will utilize a high level of skill necessary to perform the services. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the CRA, and the CRA will not be liable for any obligation incurred by the Contractor, including by not limited to unpaid minimum wages and/or overtime premiums.

9.4 Assignments; Amendments.

9.4.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by the Contractor without the prior written consent of the CRA, which consent may be withheld by the CRA in its sole and absolute discretion. This Agreement shall run to the CRA and its successors and assigns.

9.4.2 It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith and approved by the CRA Board.

9.5 No Contingent Fees. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the CRA shall have the right to terminate this Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

9.6 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by nationally recognized overnight delivery service, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice may also be sent by electronic means (facsimile or email) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when received. For the present, the Contractor and the CRA designate the following as the respective places for giving such notice:

CRA: Rasha Cameau, Executive Director  
North Miami Community Redevelopment Agency  
12330 N.E. 8<sup>th</sup> Avenue  
North Miami, Florida 33161  
Telephone No. (305) 895-9839  
Facsimile No. (305) 895-9822

Copy to: Steven W. Zelkowitz  
CRA Attorney  
Spiritus Law LLC  
2525 Ponce De Leon Boulevard, Suite 1080  
Coral Gables, Florida 33134  
Telephone No. (305) 407-1937  
Facsimile No. (305) 204-9129

Contractor: Miller Electric Company  
6805 Southpoint Parkway  
Jacksonville, Florida 32216  
Attn: Brent T. Zimmerman  
Telephone No. (904) 388-8000  
Facsimile No.

9.7 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

9.8 Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

9.9 Exhibits. Each Exhibit referred to in this Agreement should be treated as part of this Agreement and is incorporated herein by reference.

9.10 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and provided that the Agreement's fundamental terms and conditions remain legal and enforceable, the remainder of the Agreement shall continue in full force and effect, remain operative and binding, and shall be enforced to the fullest extent permitted by law.

9.11 Governing Law; Venue. This Agreement will be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of the terms of this Agreement shall be brought in Miami-Dade County.

9.12 Extent of Agreement. This Agreement represents the entire and integrated agreement between the CRA and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

9.13 No Third-Party Rights. Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations, or causes of action in favor of any third party against either the CRA or the Contractor.



9.14 Ethics Requirements. The Contractor is responsible for educating itself on the various ethics and conflict of interest provisions of Florida law, Miami-Dade County Ordinance and City Code. The Contractor shall not employ, directly or indirectly, the mayor, any member of the City Council, or any director or department head of the City. The City Code prohibits any employee, or member or their immediate family or close personal relation from receipt of a benefit or to profit from any contract entered into with the City, either directly or through any firm of which they are a member, or any corporation of which they are a stockholder, or any business entity in which they have a controlling financial interest. Any affected party may seek a conflict of interest opinion from the State of Florida Ethics Commission and/or Miami-Dade County Ethics Commission regarding conflict of interest provisions.

9.15 No Liens. Contractor shall take all action necessary to prevent any liens from being recorded against the property upon which the Scope of Work is being performed; provided; however, in the event any person including but not limited to, a subcontractor records a lien against such property arising from the Contractor's performance or non-performance, payments due the Contractor shall be withheld in such amounts as the CRA, in its sole discretion, deems sufficient to completely protect and indemnify the CRA and the City from any loss, damage or claim (including attorneys' fees and costs) until the conditions requiring such measures have been completely remedied by the Contractor to the satisfaction of the CRA. The Contractor shall, within twenty (20) days of notice of the filing of any such lien, satisfy such lien or shall provide proper bonds to remove the lien from the property pursuant to Florida Law. If the lien or other condition is not remedied by the Contractor within this period of time, the CRA may, at his option, proceed to satisfy the lien from the funds held by the CRA and then deduct such amounts from any payments due or becoming due to Contractor. Alternatively, the Contractor shall reimburse the CRA for all sums so expended to remove the lien to the extent the expenditure exceeds the amount held by the CRA.

9.16 Prevailing Party's Attorney's Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

9.17 Counterparts. This Agreement may be executed in two or more counterparts, all of which together shall constitute one and the same instrument. There may be duplicate originals of this Agreement, only one of which need to be produced as evidence of the terms hereof. A copy of this Agreement and any signature thereon shall constitute an original for all purposes.

9.18 Radon Notice. Radon is a naturally, occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines may have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Department.

9.19 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

9.20 Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

9.21 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

**10. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.**

*[Remainder of page intentionally left blank]*

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first written above.

**Contractor:**

MILLER ELECTRIC COMPANY,  
a Florida profit corporation

DocuSigned by:  
*Andy Bowman*  
By: \_\_\_\_\_  
40B771C2F173470...  
Name: Andrew Bowman  
Title: Vice President

**CRA:**

NORTH MIAMI COMMUNITY  
REDEVELOPMENT AGENCY,  
a public body corporate and politic

DocuSigned by:  
*Rasha Cameau*  
By: \_\_\_\_\_  
ACDC2464E0F4447...  
Rasha Cameau  
Executive Director

Attest:

DocuSigned by:  
*Vanessa Joseph*  
By: \_\_\_\_\_  
BB47A3B4B262492...  
Vanessa Joseph, Esq.  
CRA Secretary

Approved as to form and legal sufficiency:

DocuSigned by:  
*Steven Belkowitz*  
By: \_\_\_\_\_  
3D7BD6A9E1274DE...  
Spiritus Law LLC  
CRA Attorney

**EXHIBIT "A"**

**Proposal**