



**BROWARD COUNTY PARTICIPATING ADDENDUM TO AGREEMENT BETWEEN MARTIN
COUNTY BOARD OF COUNTY COMMISSIONERS AND CHENEY BROS., INC.,
D/B/A CHENEY BROTHERS, INC.,
FOR FOOD, FOOD SERVICE SUPPLIES & CLEANING PRODUCTS**

This Participating Addendum (“Addendum”) is made and entered into by and between Broward County, a political subdivision of the State of Florida (“Broward County”), and Cheney Bros., Inc., d/b/a Cheney Brothers, Inc., an active Florida for-profit corporation (“Contractor”), each a “Party” and collectively referred to as the “Parties.”

RECITALS

A. Martin County Board of County Commissioners (“Martin County”) competitively procured food, food service supplies, and cleaning products through its Request for Bid 2022-3382 resulting in a contract dated February 22, 2022, between Martin County and Cheney Brothers, Inc., Contract Number RFB2022-3382 (“Original Agreement”).

B. Under the Original Agreement, governmental entities may make purchases under the terms and conditions of the Original Agreement if approved by Contractor.

C. Contractor has approved Broward County to make purchases under the terms of Original Agreement as supplemented by this Addendum.

D. Section 21.27 of the Broward County Procurement Code authorizes the Director of Purchasing to purchase goods or services under any procurement contract held by a governmental entity that was competitively procured.

E. Broward County desires to purchase products from Contractor under the terms of the Original Agreement as supplemented by this Addendum.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF ORIGINAL AGREEMENT; DEFINITIONS

1.1. The Original Agreement is attached as Exhibit A and incorporated herein by reference. If there is a conflict or inconsistency between any provision contained in the Original Agreement and any provision of this Addendum, the provisions of this Addendum will prevail as to transactions between Broward County and Contractor made under this Addendum.

1.2. All defined terms in the Original Agreement will have the meanings set forth therein except as otherwise stated herein.

1.2.1. **County** means, for purposes of this Addendum and for all transactions between Broward County and Contractor under the Original Agreement, Broward County. For clarity, any other reference under the Original Agreement that is intended in

context to refer to the purchasing entity for these transactions will be deemed to refer to Broward County (or, as applicable, to the respective entity or agency within Broward County).

- 1.2.2. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.
- 1.2.3. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2.4. **Contract Administrator** means the Director or Assistant Director of the Broward Addiction Recovery Division.
- 1.2.5. **Purchasing Director** means Broward County's Director of Purchasing.
- 1.2.6. **Services** means all work required of Contractor under this Addendum, including, without limitation, all deliverables, goods, consulting, training, project management, and services specified in the Scope of Services.

2. SCOPE OF SERVICES

2.1. Scope of Services. Contractor agrees to provide Broward County such items as Broward County may, from time to time, order from Contractor based on the products and pricing available under the Original Agreement. Such orders may be made by issuing a purchase order referencing this Addendum or any other purchase document as Broward County may determine appropriate; in all such events, the terms of this Addendum will be automatically incorporated in the applicable purchase order or other purchasing document.

2.2. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Addendum. Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Addendum or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in this Addendum or otherwise set forth in the Broward County Code of Ordinances or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Addendum. The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County.

3. TERM AND TERMINATION

3.1. Term. This Addendum is effective as of the date of complete execution by the Parties (the "Effective Date") and will expire at the expiration of the Original Agreement (currently February 22, 2025), as same may be extended by the parties ("Term"), unless terminated earlier under this Addendum. If the Original Agreement is terminated in accordance with its terms

before its natural expiration, this Addendum will continue unaffected for the remainder of the scheduled term upon written approval of both the Contract Administrator and Contractor documenting the agreed upon termination date.

3.2. Fiscal Year. The continuation of this Addendum beyond the end of any Broward County fiscal year (October 1 through September 30) will be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

4. COMPENSATION

4.1. Pricing; Purchases. The applicable pricing for orders by Broward County must not exceed the then-current pricing in effect under the Original Agreement (whether fixed price or a discount, off-list price). Contractor may offer Broward County additional discounts, including volume pricing, periodic/seasonal discounts, and prompt payment discounts. At any time, Broward County may request a quotation from Contractor for a proposed order, in response to which Contractor must provide a quotation for the applicable items. If Broward County elects to proceed with the purchase, Broward County may issue a purchase order or other purchasing document referencing the quotation. Alternately, Broward County may proceed with direct issuance of a purchase order or other purchasing document. Purchase orders or other purchasing documents must specify the type, amount, timing, and any applicable scope of services or acceptance criteria for the goods or services purchased. Purchase orders or other purchasing documents will be approved or executed on behalf of County as follows: the Contract Administrator may approve and execute purchase orders for which the cumulative aggregate cost to County is less than \$100,000; the Purchasing Director may approve and execute purchase orders for which the cumulative aggregate cost to the County is within the Purchasing Director's delegated authority; any purchase orders above the Purchasing Director's authority must be approved by the Board.

4.2. Method of Billing; Payment. Contractor must invoice Broward County in accordance with the Original Agreement, including Section 7. Broward County will pay Contractor within thirty (30) days after receipt of Contractor's proper invoice, as required by the "Broward County Prompt Payment Ordinance," Section 1-51.6 of the Broward County Code of Ordinances ("Code"). Payment will be made to Contractor at the remittance address designated on the applicable invoice. Invoices must comply with the requirements of this Addendum and be in a format agreed upon by the Parties. Any amounts retained by Broward County for improper invoicing or failure to comply with any requirement of this Addendum will not be subject to payment of any interest by Broward County.

5. REPRESENTATIONS AND WARRANTIES

5.1. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Contractor represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" under Section 215.473 or 215.4725, Florida Statutes. Contractor represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with Broward County on any

of the grounds stated in Section 287.135, Florida Statutes. Contractor represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

5.2. Prohibited Telecommunications. Contractor represents and certifies that Contractor and all subcontractors do not use, and for the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

5.3. Entities of Foreign Concern. The provisions of this section apply only if this Addendum provides access to an individual's personal identifying information. By execution of this Addendum, the undersigned authorized representative of Contractor hereby attests under penalty of perjury as follows: Contractor is not owned by the government of a foreign country of concern, is not organized under the laws of nor has its principal place of business in a foreign country of concern, and the government of a foreign country of concern does not have a controlling interest in Contractor; and the undersigned authorized representative of Contractor declares that they have read the foregoing statement and that the facts stated in it are true. Terms used in this section that are not otherwise defined in this Addendum will have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

6. INDEMNIFICATION

Contractor must indemnify, hold harmless, and defend Broward County and all of Broward County's current, former, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Addendum, and caused or alleged to be caused, in whole or in part, by any breach of this Addendum by Contractor, or any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Addendum (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor must, upon written notice from Broward County, defend each Indemnified Party with counsel satisfactory to Broward County or, at Broward County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section will survive the expiration or earlier termination of this Addendum. If considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under this Addendum may be retained by Broward County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld will not be subject to payment of interest by Broward County.

7. MISCELLANEOUS

7.1. Throughout the Term, Contractor must, at its sole expense, maintain the minimum insurance coverage specified in Article 10 of the Original Agreement in accordance with the terms

and conditions of this section. Contractor must ensure that "Broward County" is listed as a certificate holder and an additional insured on all policies required by the Original Agreement.

7.2. Article 17, Dispute Resolution, of the Original Agreement is amended herein by use of strikethroughs to indicate deletions and underlining to indicate additions as follows:

17.1 As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the request for mediation. If the parties cannot agree on the selection of a mediator, then ~~the~~ Broward County shall select the mediator, who, if selected solely by ~~the~~ Broward County, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator.

~~17.2 Attorney's Fees. The parties expressly agree that each party will bear its own attorney's fees incurred in connection with this Agreement.~~

~~17.3~~ 17.2 Venue. This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in ~~Martin County, Florida~~ the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

~~17.4~~ 17.3 Non-jury trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

~~17.5 The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of contract as to any issue in any way connected with this Agreement.~~

7.3. Public Records. Notwithstanding any other provision in this Addendum, any action taken by Broward County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, does not constitute a breach of this Addendum. If Contractor is acting on behalf of Broward County as stated in Section 119.0701, Florida Statutes, Contractor must:

7.3.1. Keep and maintain public records required by Broward County to perform the Services;

7.3.2. Upon request from Broward County, provide Broward County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

7.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Addendum and after completion or termination of this Addendum if the records are not transferred to Broward County; and

7.3.4. Upon expiration or termination of this Addendum, transfer to Broward County, at no cost, all public records in possession of Contractor or keep and maintain public records required by Broward County to perform the Services. If Contractor transfers the records to Broward County, Contractor must destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains the public records, Contractor must meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to Broward County upon request in a format that is compatible with the information technology systems of Broward County.

If Contractor receives a request for public records regarding this Addendum or the Services, Contractor must immediately notify the Contract Administrator in writing and provide all requested records to Broward County to enable Broward County to timely respond to the public records request. Broward County will respond to all such public records requests.

Contractor must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Contractor contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Contractor asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Contractor must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to Broward County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by Broward County, Contractor must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to Broward County for records designated by Contractor as Restricted Material, Broward County must refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Contractor, or the claimed exemption is waived. Any failure by Contractor to strictly comply with the requirements of this section will constitute Contractor’s waiver of Broward County’s obligation to treat the records as Restricted Material. Contractor must indemnify and defend Broward County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR’S DUTY TO PROVIDE

PUBLIC RECORDS RELATING TO THIS ADDENDUM, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7942, GJOHN@BROWARD.ORG, 325 SW 28TH STREET, FORT LAUDERDALE, FLORIDA 33315.

7.4. HIPAA Compliance. Broward County has access to protected health information (“PHI”) that is subject to the requirements of 45 C.F.R. Parts 160, 162, and 164 and related regulations. If Contractor is considered by Broward County to be a covered entity or business associate or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or the Health Information Technology for Economic and Clinical Health Act (“HITECH”), Contractor must fully protect individually identifiable health information as required by HIPAA or HITECH and, if requested by Broward County, must execute a Business Associate Agreement in the form attached as Exhibit B. The County Administrator is authorized to execute a Business Associate Agreement on behalf of Broward County. Where required, Contractor must handle and secure such PHI in compliance with HIPAA, HITECH, and related regulations and, if required by HIPAA, HITECH, or other Applicable Law, include in its “Notice of Privacy Practices” notice of Contractor’s and Broward County’s uses of client’s PHI. The requirement to comply with this provision, HIPAA, and HITECH will survive the expiration or earlier termination of this Addendum. Contractor must ensure that the requirements of this section are included in all agreements with subcontractors.

7.5. Living Wage Requirement. If Contractor is a “covered employer” within the meaning of the “Broward County Living Wage Ordinance,” Sections 26-100 through 26-105 of the Code, Contractor must fully comply with the requirements of such ordinance and must pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as defined therein. Contractor must ensure all subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.

7.6. Polystyrene Food Service Articles. Contractor must not sell or provide for use on Broward County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

7.7. Ownership Disclosure Form. By January 1 of each year, Contractor must submit, and cause each Subcontractor to submit, an Ownership Disclosure Form (or such other form or information designated by Broward County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

7.8. Anti-Human Trafficking. By execution of this Addendum by the undersigned authorized representative of Contractor, Contractor hereby attests under penalty of perjury that Contractor does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes; under penalties of perjury, the undersigned authorized representative of

Contractor declares that they have read the foregoing statement and that the facts stated in it are true.

7.9. Notices. Unless otherwise stated in this Addendum, for notice to a Party to be effective under this Addendum, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and will be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice will remain as set forth herein unless and until changed by providing notice of such change. The following notice address for Broward County is designated as the applicable custodian for purposes of the statutory notice in Section 8.1.2 of the Original Agreement.

<u>NOTICE TO BROWARD COUNTY:</u> Broward Addiction Recovery Center Attn: Gerard John, Director 325 SW 28th Street Fort Lauderdale, Florida 33315 Email: gjohn@broward.org	<u>NOTICE TO CONTRACTOR:</u> Cheney Bros., Inc. Attn: Edward Lacey, District Sales Manager 1 Cheney Way Riviera Beach, Florida 33404 Email: edwardl@cheneybrothers.com
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7.10. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Addendum, nothing herein is intended to serve as a waiver of sovereign immunity by Broward County, nor will anything included in this Addendum be construed as consent by Broward County to be sued by third parties in any matter arising out of this Addendum.

7.11. Third-Party Beneficiaries. Neither Contractor nor Broward County intends to primarily or directly benefit a third party by this Addendum. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Addendum and that no third party will be entitled to assert a right or claim against either of them based upon this Addendum.

7.12. Recitals; Multiple Originals and Counterparts. Any and all Recital clauses stated above are true and correct and are incorporated in this Addendum by reference. The attached Exhibits are incorporated into and made a part of this Addendum. This Addendum may be executed in multiple originals or in counterparts, whether signed physically or electronically, each of which will be deemed to be an original, and all of which, taken together, will constitute one and the same agreement.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Participating Addendum: Broward County, through its Board of County Commissioners, signing by and through its Director of Purchasing, authorized to execute same pursuant to the Broward County Procurement Code, and Contractor, signing by and through its duly authorized representative.

BROWARD COUNTY

BROWARD COUNTY, by and through
its Director of Purchasing

By: _____
Director of Purchasing

_____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: _____
Ronald Honick (Date)
Assistant County Attorney

By: _____
Karen S. Gordon (Date)
Senior Assistant County Attorney

RJH/bh
Martin County Cheney Brothers Agreement PA
10/15/2024
#60064

BROWARD COUNTY PARTICIPATING ADDENDUM TO AGREEMENT BETWEEN MARTIN COUNTY
BOARD OF COUNTY COMMISSIONERS AND CHENEY BROS. INC.,
D/B/A CHENEY BROTHERS, INC.,
FOR FOOD, FOOD SERVICE SUPPLIES & CLEANING PRODUCTS

CONTRACTOR

Cheney Bros., Inc., d/b/a Cheney Brothers, Inc.

By: _____
Authorized Representative

Print Name and Title

_____ day of _____, 2024