

RESOLUTION NO. 2017-030

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY TO EXECUTE A SERVICES AGREEMENT BETWEEN MCCi LLC AND THE CITY OF HIALEAH, FLORIDA, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", TO PROVIDE DOCUMENT MANAGEMENT SOFTWARE, HARDWARE AND OTHER RELATED SERVICES, FOR A TERM COMMENCING ON THE EFFECTIVE DATE OF THE AGREEMENT AND ENDING ON JUNE 15, 2018, WITH AN OPTION TO RENEW FOR TWO CONSECUTIVE ONE-YEAR TERMS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to City of Hialeah Code Section 2-818, if advantageous to the City, the City may utilize bids that have been awarded or under contract by other governmental agencies, in which case competitive bidding will not be required;

WHEREAS, the City of Miami issued an Invitation to Bid ("ITB No. 391322), and after evaluating the responders' qualifications and competitive proposals, awarded the contract to MCCi LLC;

WHEREAS, the City desires to utilize the City of Miami's contract with MCCi LLC, which was competitively procured through a process substantially similar as that set forth in Chapter 2, Article IV., entitled "Purchasing and Competitive Bidding" of the City of Hialeah Code of Ordinances, and it is advantageous and beneficial to the City of Hialeah and its residents;

WHEREAS, MCCi LLC has agreed to provide the City with document management software, hardware and related services, pursuant to the terms and conditions set forth in the Agreement attached hereto and incorporated herein as Exhibit "1", whose terms and scope are substantially the same as those set forth by the City of Miami's Invitation to Bid; and

WHEREAS, MCCi LLC has made representations to the City, and the City has relied on MCCi LLC's representations about its experience, equipment, manpower, capacity, permits and licenses to perform all services required under the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby incorporated and adopted by reference as if fully set forth herein.

Section 2: The Mayor and the City Clerk, as attesting witness, are hereby authorized to execute, on behalf of the City, a Services Agreement between MCCi LLC and the City of

Hialeah, Florida, in substantial conformity with the Agreement attached hereto and made a part hereof as Exhibit "1", to provide document management software, hardware and other related services, for a term commencing on the effective date of the Agreement and ending on June 15, 2018, with an option to renew for two consecutive one-year terms.

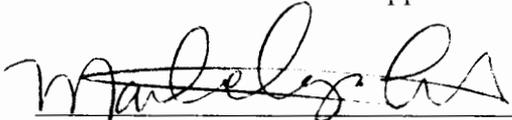
Section 3: This resolution shall become effective when approved by majority vote of the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

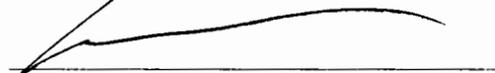
PASSED AND ADOPTED this 11 day of April, 2017.


Katharine E. Cue-Fuente
Council Vice President

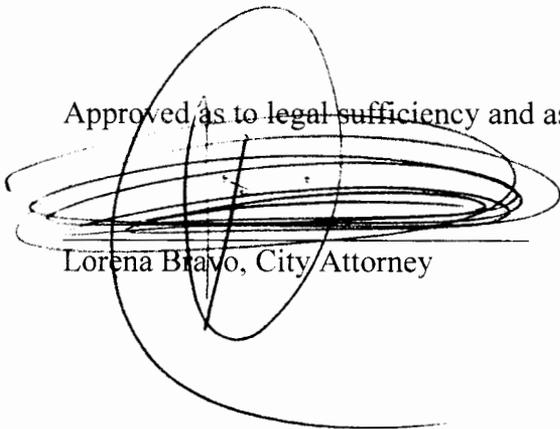
Attest:

Approved on this 24 day of April, 2017.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to legal sufficiency and as to form:


Lorena Bravo, City Attorney

Resolution was adopted by a (6-0-1) vote with Councilmembers, Caragol, Lozano, Hernandez, Cue-Fuente, Garcia-Martinez and Casáls-Muñoz voting "Yes". Council President Gonzalez absent.

**SERVICES AGREEMENT BETWEEN MCCi LLC
AND THE CITY OF HIALEAH**

This Agreement is made and entered into on this ___ day of _____, 2017 (“Effective Date”), by and between the City of Hialeah, a political subdivision of the State of Florida, 501 palm Avenue, Hialeah, Florida 33010 (hereinafter referred to as the “City”) and MCCi LCC, a Florida limited liability company (referred to as “Contractor”), whose business address is 1700 Capital Circle SW, Tallahassee, Florida 32310 (collectively, referred to as the “Parties”).

RECITALS

WHEREAS, Contractor provides document management software, hardware and related services to multiple local government agencies nationwide;

WHEREAS, Contractor provides services substantially similar to those required by the City of Miami’s Invitation to Bid No. 391322 for Document Management Software, Hardware, and Services, opened on January 14, 2014;

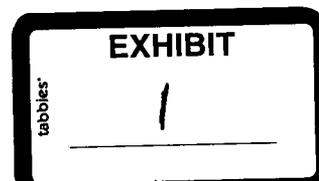
WHEREAS, the Contractor submitted a proposal in response to the City of Miami’s Invitation to Bid No. 391322 and the City has relied upon the proposal and other information provided by the Contractor concerning the Contractor’s experience and ability to provide all the services contemplated by this Agreement to the City; and

WHEREAS, pursuant to the City of Miami’s Invitation to Bid No. 391322, the City of Miami and Contractor have the option to renew the terms of the contract entered pursuant to said City of Miami’s Invitation to Bid No. 391322, and the City has elected to purchase off the City of Miami’s Invitation to Bid No. 391322, subject to modifications included herein to address local needs and requirements, and to assist the CITY meet its procurement requirements.

NOW THEREFORE, for an in consideration the mutual promises set forth in this Addendum, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Parties to this Agreement, the Parties agree to the following terms and conditions:

1. Incorporation by reference: The City of Miami’s Invitation to Bid No. 391322 for Document Management Software, Hardware, and Services and corresponding addendums opened on January 14, 2014 (“City of Miami ITB”) and Contractor’s proposal in response to the City of Miami ITB (“Contractor’s Response”) are incorporated herein by reference as if fully set forth herein and shall be considered part of the terms of this Agreement.

2. Scope of Services: Contractor shall provide the goods and services as specifically described in Contractor’s Response and Contractor’s proposal to the City, attached hereto and incorporated herein as Exhibit “A” (the “Services”).



requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If the Contractor fails to comply with the requirements in this Section, the City may enforce these provisions in accordance with the terms of this Agreement. If the Contractor fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, 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, THE CONTRACTOR SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, BY TELEPHONE (305/883-5820), E-MAIL (CityClerk@hialeahfl.gov), OR MAIL (CITY OF HIALEAH, OFFICE OF THE CITY CLERK, 501 PALM AVENUE, 3RD FLOOR, HIALEAH, FLORIDA 33010).

7. Independent Contractor: This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that Contractor, its employees, subcontractors, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City. The City shall have no obligation to pay or provide for Contractor's employees, agents, representatives, or subcontractors. Contractor's employees, agents, representatives, or subcontractors shall not attain any right or benefit under the civil service or pension ordinances of the City, or any right or benefit generally afforded to classified or unclassified employees of the City, such as pension benefits, worker's compensation, health insurance, unemployment benefits, or any other right or privilege granted to the City's officers and employees. Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder. Contractor agrees that it is a separate and independent enterprise from the City, that it has full opportunity to find other businesses, that it makes its own investment in its business, and that it will utilize a high level of skills necessary to perform the Services. This Agreement shall not be construed as creating a joint employment relationship between Contractor and the City. Therefore, the City shall not be liable for any obligation incurred by Contractor, including but not limited to, unpaid minimum wages and/or overtime premiums.

8. Nondelegable Performance. Subcontractors: Contractor acknowledges that in entering into this Agreement, the City has relied upon Contractor's professional background and experience, including any prior experience in providing these or other similar services to other municipalities. As such, the duties and obligations undertaken by Contractor pursuant to this Agreement shall not be delegated or assigned to any person or entity, in whole or in part, unless

the City first consents in writing to the performance or assignment of such service or any part thereof by another person or entity.

9. Indemnification:

Contractors, for itself, and for its officers, directors, employees, subcontractors, agents, representatives, successors, assigns, and any other individual or entity who may attempt to sue or be sued on Contractor's behalf, hereby unequivocally agrees to protect, defend, indemnify, forever discharge, release, waive and hold harmless the City, its officers, whether elected or appointed, directors, employees, attorneys, contractors, agents, representatives, and all other persons, entities, organizations and corporations affiliated therewith (all of whom collectively constitute the "City's Released Parties"), from and against any and all claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and from any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, claim for royalties, or any other liability, loss, cost or expense of whatever kind and premised on whatsoever theory of liability (all of which collectively constitute "Claims"), arising out of, resulting from, relating to, incidental to, or in any way connected to the permitted work and/or Contractor's performance under this Agreement, even if it is alleged that the Claims arise out of, or resulted from the negligence of the Released Parties. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

Contractor agrees, at its expense, after written notice from the City, to defend any action against the City for which the Contractor has agreed to indemnify and defend the City, or the City, at the City's option, may elect instead, to secure its own attorney to defend any such action and the reasonable costs and expenses of such attorney incurred, shall be payable by the Contractor.

The provisions set forth in this Section shall survive the expiration or earlier termination of this Agreement and shall remain binding upon the Contractor and its sub-contractors.

10. Insurance:

Contractor shall provide, pay for and maintain in force at all times during the initial term of this Agreement, and any renewal term thereafter, such insurance, including Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, Business Automobile Liability Insurance, in such amounts as specified in Exhibit "B".

Such policy or policies shall be issued by the United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. Contractor shall specifically protect the City by

naming the City as additional insured under the Comprehensive General Liability Insurance Policy.

Contractor shall provide the City with a Certificate of Insurance or copy of all insurance policies required by this Section within ten (10) days after the execution of this Agreement. Issuance of a purchase order is contingent upon the receipt of proper insurance documents. All endorsements and certificates shall state that the City shall be given 30 days' notice prior to expiration or cancellation of the policy.

11. Breach and Termination:

11.1. Termination for cause: If Contractor defaults in its performance under this Contract and does not cure the default within thirty (30) days after written notice of default, the City may terminate this Agreement, in whole or in part, upon written notice without penalty to the City. In such event the Contractor shall be liable for damages including the excess cost of procuring similar supplies or services: provided that if (1) it is determined for any reason that the Contractor was not in default or (2) the Contractor's failure to perform is without his or his subcontractor's control, fault or negligence, the termination will be deemed to be a termination for the convenience of the City.

Notwithstanding anything else contained herein, each of the events described in Sections (i), (ii), (iii), (iv) and (v) below shall constitute an event of default for which there shall be no opportunity to cure. For such events, termination shall be effective three (3) calendar days after the City gives notice to Contractor or at such other time designated by the City and the Agreement shall be deemed terminated without further action on the part of the City.

- i.** Voluntary Bankruptcy: Written admission by Contractor that it is bankrupt; or filing by Contractor of a voluntary petition under the Federal Bankruptcy Act; or consent by Contractor to the court appointment of a receiver or trustee for all or a substantial portion of its property or business; or the making of any arrangement by Contractor with, or for the benefit of, its creditors or assigning to a trustee, receiver, or similar functionary (regardless of how designated) all or a substantial portion of Contractor's property or business; or by becoming insolvent;
- ii.** Involuntary Bankruptcy: Final adjudication of Contractor as bankrupt under the Federal Bankruptcy Act;
- iii.** Public Entity Crime: Contractor is placed on a convicted vendor list following a conviction for a public entity crime;
- iv.** Fraud: Contractor commits an act or omission constituting fraud, willful or gross negligence, or malfeasance in its performance of this Agreement.

11.2. Termination without cause: The City may terminate this Agreement, in whole or in part, upon thirty (30) days prior written notice, when it is in the best interest of the City. To the extent that this Agreement is for services, supplies, products, equipment, or software, the City shall be liable only for payment in accordance with the payment provisions of the Agreement for those services rendered and goods delivered, prior to termination.

12. Compliance with Federal, State and Local Laws: Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City, now in effect or hereafter enacted, which are applicable in any way to Contractor, its officers, employees, agents, or subcontractors to its performance of this Agreement.

13. Award of Agreement: Contractor warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that she has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

14. Conflict of Interest: 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 interests, direct or indirect, with the Contractor. Contractor further covenants that, in the performance of the Agreement, no person having such conflicting interest shall be employed. Any such interest on the part of Contractor or its employees must be disclosed in writing to the City. Contractor is aware of the conflict of interest laws of the City, Hialeah Code Ch 26, Art. I and II; Code of Miami-Dade County, Florida, § 2-11.1 et seq., and the State of Florida, Chapter 112, Part III, Florida Statutes and agrees that it shall fully comply in all respects with the terms of such laws.

15. Nondiscrimination: Contractor represents and warrants that Contractor does not and will not engage in unlawful discriminatory practices and that there shall be no unlawful discrimination in connection with Contractor's performance under this Agreement on account of race, color, sex, religion, age, handicap, disability, marital status, national origin, ancestry, familial status, or sexual orientation. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, national origin, ancestry, familial status, or sexual orientation unlawfully be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

16. Notice: All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, upon the date of actual receipt.

CITY OF HIALEAH

Alexis Riveron
City of Hialeah Building Official
501 Palm Avenue, 2nd Floor
Hialeah, Florida 33010
305-883-5830

MCCI LLC

Donny Barstow
President
1700 Capital Circle SW
Tallahassee, Florida 32310
800-342-2633

17. Sovereign Immunity: Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statutes.

18. Construction of Agreement. This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. Contractor agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

19. Miscellaneous Provisions:

19.1. No waiver: The failure of the City to insist on the performance or observance by Contractor of any one or more conditions or covenants of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such covenant or condition, and Contractor's obligation with respect to such future performance shall continue in full force and effect.

19.2. Gender: The terms City and Contractor, as herein contained, shall include the singular and/or the plural, the masculine, the feminine, and/or the neuter, the heirs, successors, executors, administrators, personal representatives and/or assigns, wherever and whenever, the context so requires or admits.

19.3. Severability: Should any provision, paragraph, sentence, word, or phrase contained in this Agreement be determined by a court of competent jurisdiction having precedential value to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, City or the United States, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform to such laws, or, if non-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.

19.4. Successors and assigns: This Agreement shall be binding upon and inure to the benefit of the parties herein, their heirs, executors, legal representatives, successors and assigns.

19.5. Entire agreement: This Agreement and its attachments constitute the sole and only Agreement of the parties hereto. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

19.6. Amendments: No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

19.7. Conflict: In the event of conflict between the terms of this Agreement and any terms, conditions or representations contained in any attached document, the terms in this Agreement shall prevail.

19.8. Authority: The person signing on behalf of Contractor is an officer of Contractor with full authority to execute this Agreement without further action from Contractor. Upon execution, this Agreement shall be binding on Contractor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the respective duly authorized officials, on the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of the
City of Hialeah

Marbelys Fatjo, City Clerk
(SEAL)

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena Bravo, City Attorney

Authorized signature for

MCCi LLC
a Florida limited liability company

By: _____
Title: _____
Date: _____

Attest Witness:
Signature _____
Name _____
Date: _____

CORPORATE SEAL

State of _____
County of _____

Sworn to and subscribed before me on this ____ day of _____, 2017, by
_____ on behalf of MCCi LLC, who is ____ Personally known or
____ Produced valid photo identification.

Commission:

Notary Public, State of Florida