③ ✓ 4/5/15 ©

City Manager's Office

ITEMS FOR SIGNATURE/REVIEW

CMO LOG #: MAR-70

TODAY'S DATE: 3/27/15

Assigned to: **L. FELDMAN** ☑ **S. HAWTHORNE** ☐ **S. TORRIENTE** ☐

Title of Document for Signature: Enterprise Content Management System (ECMS) and Professional Services #744-11384 with MCC LLC

Memo/Doc # (if applicable): 150251 Par-8 Date of Doc.: 2-17-15

Document received from: Procurement Vote Summary: 5/0

☐ **APPROVED FOR LEE FELDMAN'S SIGNATURE**

☐ **PENDING APPROVAL** ***(See comments below)***

☐ **N/A FOR L. FELDMAN TO SIGN**

PER ASSISTANT CITY MANAGER:

S. HAWTHORNE _____ or **S. TORRIENTE** _____
(Initial and date above) (Initial and date above)

Rejection/Questions/Additional Information Request:

4/2

Comments/Tracking Information: Please leave this Routing form attached to these agreements so the Clerk's office knows who to return them to.

Wendy - P/S return (or call) these agreement(s) to me in Procurement. Thank you. Elizabeth :)

AGREEMENT FOR

ENTERPRISE CONTENT MANAGEMENT SYSTEM (ECMS) and PROFESSIONAL SERVICES

THIS AGREEMENT, made this 17th day of February 2015, is by and between the City of Fort Lauderdale, a Florida municipality, ("City" or "Client" or "Customer"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and MCCi LLC, a Florida limited liability company, ("Contractor" or "Company" or "MCCi"), whose address and phone number are 1958-A Commonwealth Lane, Tallahassee, FL 32303/P.O. Box 2235, Tallahassee, FL 32316; (850) 701-0725.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

WITNESSETH:

I. CONTRACT DOCUMENTS

The following documents (collectively "Contract Documents") are hereby incorporated into and made part of this Agreement:

(1) Request for Proposal/Invitation to Bid 744-11384, Enterprise Content Management System (ECMS) and Professional Services, including any and all addenda, prepared by the City of Fort Lauderdale, ("RFP" or "Exhibit A").

(2) The Contractor's Best and Final Offer dated August 14, 2014, including any all attachments and response clarifications (collectively, "Exhibit B").

(3) The Service Level Agreement for Level 3 Application Support ("Exhibit C").

(4) The Contractor's response to the RFP, dated March 27, 2014, excluding the Public Sector Not-to-Exceed Scanning Pricing on Pages 63 and 64 thereof, and all addenda and clarification responses, (collectively, "Exhibit D").

All Contract Documents may also be collectively referred to as the "Documents." In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

A. First, specific direction from the City Manager (or designee)
B. Second, this Agreement dated February 17th, 2015, and any attachments
C. Third, Exhibit A.
D. Fourth, Exhibit B.
E. Fifth, Exhibit C.
F. Sixth, Exhibit D.

II. SCOPE

MCCi shall perform the Work under the general direction of the City as set forth in the Contract Documents and developed Task Orders.

Unless otherwise specified herein, MCCi shall perform all Work identified in the Contract Documents and Task Orders. The parties agree that the scope of services is a description of MCCI's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, if any, and tasks which are such an inseparable part of the work described that exclusion would render performance by MCCi impractical, illogical, or unconscionable.

MCCi acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under the Agreement.

By signing this Agreement, MCCi represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

III. TASK ORDER CONTENT (SCOPE OF WORK/STATEMENT OF WORK)

(1) Each Task Order issued pursuant to this Agreement shall contain, at a minimum, the following: an outline of all software and costs required to meet the functional requirements of the Task Order(s), projected hours and costs of MCCi Personnel per task, a Microsoft Project plan including schedule and staff resources and responsibility, and all estimated reimbursable expenses, all of which shall be documented in MCCi's proposal, subject to the City's prior written approval.

IV. EVALUATION OF SERVICES AND DELIVERABLES

(1) MCCi shall submit all deliverables required to be submitted for review and approval by the City in accordance with the specific requirements of a Task Order. The City's payment to MCCi for work performed pursuant to a Task Order shall be contingent on the City's prior approval of the corresponding deliverables.

(2) The City's failure to provide a notice of disapproval does not constitute approval. In reviewing the deliverables, the City will provide MCCi with:

A. A written notification of the City's approval; or

B. A written notification that each deliverable is approved subject to MCCi providing prompt correction of a minor deficiency; or

C. In the case of a deliverable that does not meet the requirements, a written notification of the City's disapproval. The City's disapproval notification will state the basis on which the deliverable was determined to be unacceptable.

(3) For each deliverable, the City shall have a minimum of (45) days, or such other time as is agreed to by the parties, commencing on the first day after receipt by the City of the deliverable, to determine whether the deliverable is approved as submitted, is approved subject to the correction by MCCi of minor deficiencies, or whether it is unacceptable and therefore disapproved.

V. ISSUE RESOLUTION

(1) City and MCCi each agree to use their best reasonable efforts to resolve promptly any functional, technical, cost overrun, and any other issue that may arise during the course of the Project. However, each party acknowledges that certain issues, by their nature, may require more time to resolve and in these situations, each party agrees to use its good faith and best reasonable efforts to expedite the resolution as soon as practicable and without delay.

(2) Within ninety (90) days after receipt of the City's notification of "disapproval," MCCi shall deliver to the City the necessary revisions or modifications for a second review by the City.

(3) If after the second review period, the deliverable remains unacceptable in accordance with the Task Order/Statement of Work, the City may direct MCCi to:

A. Correct all outstanding deficiencies on or before a specific date set by the City for correcting such deficiency or deficiencies; or

B. Cancel the task order and any obligation to pay.

(4) City shall have the right to approve or accept part of any deliverable, in accordance with the Statement of Work and or Task Order. Any such approval shall be regarded as partial and conditional upon City's approval or acceptance of all aspects of the deliverable. MCCi must correct any deficiencies within the time the parties determine is required for such correction in the City's notice concerning a partial approval or, if no time is given, promptly. If the City does not subsequently *approve or accept all* aspects of the deliverable, the earlier conditional acceptance or approval may, in accordance with the requirements of the Task Order(s) and acceptance criteria, be regarded as void and of no effect by City, and which shall be accepted by MCCi.

VI. TERM OF AGREEMENT

This Agreement shall commence on February 17th, 2015, and shall expire four years after the date of the City's acceptance of the software specified in the RFP.

The City reserves the right to extend this Agreement, for two additional two-year terms provided all terms, conditions, and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.

In the event services are scheduled to end because of the expiration of this contract, MCCi shall continue the service upon the request of the City. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. MCCi shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

VII. COST ADJUSTMENTS

Prices quoted shall be firm for the initial contract term. No cost increases shall be accepted in this initial contract term. Thereafter, any extensions which may be approved by the City shall be subject to the following: Costs for any extension terms shall be subject to an adjustment only if increases or decreases occur in the industry. Such adjustment shall be based on the latest yearly percentage increase in the All

Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor, and shall not exceed five percent (5%).

The yearly increase or decrease in the CPI shall be that latest Index published and available for the calendar year ending 12/31, prior to the end of the contract year then in effect, as compared to the index for the comparable month, one-year prior.

Any requested adjustment shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective on the beginning date of the approved contract extension.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the Contract will be considered cancelled on the scheduled expiration date.

VIII. COMPENSATION

MCCi agrees to provide the services and/or materials as specified in the Contract Documents at the costs specified in Exhibit B. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided herein, no amount shall be paid to Contractor to reimburse Contractor's expenses.

IX. METHOD OF BILLING AND PAYMENT

The City will accept a single invoice after the City's acceptance and approval of the completely installed software, following the test period, in accordance with this Agreement.

A payment schedule for each task order thereafter will be included in the task order based upon an agreed project plan, schedule of deliverables, and services.

Payments will be made within forty-five days after the City's receipt of proper invoice in accordance with the Florida Local Government Prompt Payment Act. The original invoice shall be submitted to City of Fort Lauderdale, Accounts Payable, 100 N Andrews Avenue, Fort Lauderdale, Florida 33301, or via email to acctspayable@fortlauderdale.gov. A copy of the invoice shall be submitted to the City's Project Manager, City of Fort Lauderdale, Information Technology Division, Fort Lauderdale, Florida 33301, or emailed to SGialluca@fortlauderdale.gov.

The invoice(s) shall fully detail all deliverables, including all services, hours and charges and costs and shall specify the status of the particular task or project as of the date of the invoice as regards the accepted schedule for that task or project. If at any time during the contract, the City shall not approve or accept MCCi's work product, and agreement cannot be reached between the City and MCCi to resolve the problem to the City's satisfaction, the City shall negotiate with MCCi on a payment for the work completed and usable to the City.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or Project Manager or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

X. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sub licensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for

convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

MCCi shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-"rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes

coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - $500,000

Any firm performing work for or on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made, by the City's Risk Manager, if they are in accordance with Florida Statutes.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage $1,000,000.

This coverage must include, but not limited to:

a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
b. Coverage for Premises/Operations
c. Products/Completed Operations
d. Broad Form Contractual Liability
e. Independent Contractors

Automobile Liability Insurance

Covering all owned hired and non-owned automobile equipment.

Limits: Bodily injury	$250,000 each person,
	$500,000 each occurrence
Property damage	$100,000 each occurrence

Professional Liability (Errors & Omissions)

Consultants

Limits: $2,000,000 per occurrence

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 N. Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

G. Standard of Care

Contractor represents that he/she/it is qualified to perform the Work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

H. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein.

I. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

J. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

K. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

L. Inspection and Non-Waiver

Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

M. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor 's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

N. Conflicts

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

O. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

P. Compliance with Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

Q. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

R. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of $1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of $1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of $1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes.

In no event shall MCCi's total liability to the Client exceed the total amount of fees paid to MCCi by the Client during the term of this Agreement and any extension terms.

S. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for

Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

T. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

U. Prior Agreements

This document in its entirety represents the final and complete understanding of the parties. It is contemplated by the parties that during the useful life of this Agreement, MCCi and City hereby agree that the terms and conditions provided in this agreement in its entirety shall supersede any conflicting or amending language in any of the other Contract Documents, or in any renewal, amendment, or task order, unless it is expressly stated that this Agreement is superseded.

The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

V. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

W. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal Authority.

X. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, (in the event that any parts of the system are hosted off premise, performance shall not be excused under this Section for a period in excess of eight (8) hours) provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

Y. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed, Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of $1 million or more:

The Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2014), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2014), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2014), as may be amended or revised.

Z. Public Records

Contractor shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records andat a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

XI. VARIANCES AND EXCEPTIONS to the RFP

(1) The fourth paragraph of Section 10 of Part III of the RFP is amended to provide as follows:

Contractor shall provide, if required by the City, documentation of all actual travel or related costs. In the event that travel is requested to be cancelled by the City after the City representative or City Project Manager previously approved the travel, MCCi is allowed to charge the City for any non-refundable travel expenses incurred, except that, in accordance with the City's Travel Allowance and Subsistence Policy, MCCi shall ensure that any unused airline ticket be used for travel related to this Agreement at the earliest possible time. In the event that travel is requested to be cancelled by MCCi after the MCCi representative or the MCCi Project Manager previously approved the dates for travel, MCCi will provide a credit to the City for any non-refundable travel and other expenses incurred by the City.

(2) Section 11 of Part III of the RFP is amended to provide as follows:

MCCi is the City's Value Added Reseller ("VAR") of Record for the Software under this Agreement.

While this contract is for software procurement, support and services as provided to the City as referenced in the Request for Proposal and all Task Orders, the City will require similar work for the various city departments. MCCi agrees to take on such work unless such work would not be considered reasonable or become an undue burden to the Contractor.

The City may require additional items or services of a similar nature, but not specifically listed in the contract. The Contractor agrees to provide such items or services, and shall provide the City prices on such additional items or services based upon a formula or method, which is the same or similar to that used in establishing the prices in his/her/its proposal. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items or services from other vendors, or to cancel the contract upon giving the Contractor thirty (30) days written notice.

(3) The Contractor's proposed variance to Section 17 of Part III of the RFP, requesting a waiver of the performance bond requirement, is deleted.

(4) MCCI warrants that the software provided pursuant to this Agreement will be free of any defects during a period of ninety days following installation of the software.

(5) Section 28 of Part III of the RFP is amended to provide as follows:

> The successful Contractor shall successfully complete the acceptance testing requirements within ninety (90) days following the mutually agreed upon Contract Scope of Work and Timeline schedule. The City will accept the operational product(s) when the Contractor(s) have successfully proven the respective product to function in accordance with the RFP requirements and functionality, but not to exceed one hundred and twenty (120) days from the Timeline schedule established in the Contract agreement. Performance trial and acceptance testing shall be based on the system, including all equipment and software (with the exception of the SunGard's One Solution Integration, which is not being provided by MCCi – as stated in the Contractor's best and final offer documentation), being fully and consistently operational for a period of not less than thirty (30) working days after receipt and installation. It is not required that the software be configured to meet a specific business process or use case scenario; "consistently operational" refers to the core software modules being successfully installed and operational in a generic capacity.
>
> The City will use this testing period to evaluate the products and verify that all requirements stated in this RFP have been met. In testing for acceptance, the City requires that the products operate problem free for thirty (30) continuous working days. If it is determined that the products have not operated problem free for thirty (30) continuous working days or met the requirements of the RFP/Scope of Work, the City will allow MCCi up to 30 days to correct the problem and an additional testing period of thirty (30) days. If it is still determined that all requirements have not been met or that resolution of any problems cannot be attained during the testing period, the City reserves the right to cancel this Agreement at no cost to the City.

(6) LASERFICHE SOFTWARE UPGRADE

When Laserfiche software is upgraded, except as otherwise provided by Florida law, the old copy of the software, if media was used for the installation, must be returned, and will no longer be a valid copy. Proof of previous purchase is required to receive upgrade. Upgrade credit applied towards new purchase is 100% of original software purchase price. The difference between the new system (server, full and retrieval users) price and the old system (server, full and retrieval users) price must be greater than or equal to 10% of the new system price. Otherwise, a minimum software upgrade adjustment will be applied to comply with the 10% price difference requirement. One year of Laserfiche Software Assurance Plan ("LSAP") must be purchased for new products when upgrading. LSAP of the original product will not be credited. However, remaining months of LSAP can be applied towards the new

purchase of one year of LSAP for the new products. To receive software credit for prior versions of Laserfiche software, the Client must have an active LSAP (support/maintenance that has not expired).

(7) *SOFTWARE ASSURANCE PLAN (SAP)*

Annual support payment is due in advance. MCCi will invoice sixty (60) days prior to the anniversary date of the Customer's acceptance of the software specified in the RFP. Reinstatement fees* may apply if payment is received more than forty-five days after such anniversary date. Any updates requiring shipment of software require Client to pay shipping costs.
*REINSTATEMENT FEES:
The reinstatement fee equals ten percent (10%) of annual LSAP (support) price multiplied by the number of expired months.

(8) *MCCi SOFTWARE CONFIGURATIONS*

The Customer may elect to contract with MCCi to configure the standard software. Upgrades to existing programs by vendors other than MCCi, or the acquisition of new programs from vendors other than MCCi, may have an effect on configurations made to the software by MCCi. MCCi will not be held responsible if upgrades or changes made by the Customer or another vendor or application preclude the operation of MCCi's configurations.

(9) CLIENT SOFTWARE CUSTOMIZATIONS

The Client may also choose to customize the software internally, without MCCi's help. MCCi is not responsible for any damages caused by the Client's customization of the software. MCCi will not be held responsible for correcting any problems that may occur from these customizations. Routine updates to the software may affect any customizations made by the Client. If MCCi's help is required to correct/update any customizations made by the Client, appropriate charges will apply.

(10) SOFTWARE INSTALLATION

The paragraph titled "SOFTWARE INSTALLATION" contained in the Contractor's response to the RFP is revised to provide as follows: "MCCi will install all software outlined herein or as identified in each Task **Order/Scope of Work."**

IN WITNESS WHEREOF, the City and MCCi execute this Contract as follows:

ATTEST:

Jonda K. Joseph

Jonda K. Joseph, City Clerk

CITY OF FORT LAUDERDALE

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:

Senior Assistant City Attorney

ATTEST:

Michelle S. Eagen, CFO

Print Name: Michelle S. Eagen, CFO

Title: CFO

MCCi, LLC

By: _____

Lawton A. Langford

Managing Member

(SEAL)

STATE OF Florida:

COUNTY OF Leon:

The foregoing instrument was acknowledged before me this 26th day of February, 2015, by Lawton A. Langford as managing member for MCCi, LLC, a Florida limited liability company.

(SEAL)

CHRISTIE B. DAVIS
MY COMMISSION # FF 127279
EXPIRES: June 21, 2018
Bonded Thru Notary Public Underwriters

Notary Public, State of Florida

(Signature of Notary Public)

Christie B. Davis

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X OR Produced Identification_____

Type of Identification Produced_____