

**CITY OF NORTH MIAMI**  
**PROFESSIONAL SERVICES AGREEMENT**  
(SCANNING SERVICES – ITQ 18-11-12)

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into this 10<sup>th</sup> day of April, 2012, by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125<sup>th</sup> Street, North Miami, FL (“City”) and **The DRS Group of Florida, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 11281 Interchange Circle South, Miramar, FL 33025 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”.

**RECITALS**

**WHEREAS**, the City currently maintains large amounts of building and zoning documents which require scanning into digital form, as well as certified document disposal services (“Services”); and

**WHEREAS**, the City issued an *Invitation to Quote No. 18-11-12 Scanning Services, Building & Zoning Documents* (“ITQ”) for the purpose of competitively selecting a company capable of providing Services, in accordance with the terms, conditions and specifications contained in the ITQ; and

**WHEREAS**, on March 29, 2012, Contractor submitted its *Proposal for Scanning Services Quotation # 18-11-12* (“Proposal”), which was subsequently selected by City administration as having those qualifications and references most advantageous to the City; and

**WHEREAS**, the City Manager has determined that it is in the best interest of the City to enter into this Agreement with Contractor for the provision of Services, in accordance with the requirements of the ITQ.

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

**ARTICLE 1 - RECITALS**

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

**ARTICLE 2 - CONTRACT DOCUMENTS**

2.1 The following documents are incorporated into and made part of this Agreement (collectively referred to as the “Contract Documents”):

2.1.1 The City’s Invitation to Quote No. 18-11-12 Scanning Services, Building & Zoning Documents, attached hereto as Exhibit A; and

2.1.2 Contractor’s Proposal for Scanning Services Quotation # 18-11-12, attached hereto as Exhibit B; and

2.1.2 Contractor's Proposal for Scanning Services Quotation # 18-11-12, attached hereto as Exhibit B; and

2.1.3 Contractor's Certificate of Liability Insurance dated April 5, 2012, attached hereto as Exhibit C; and

2.1.4 Any additional documents which are required to be submitted by Contractor under this Agreement.

2.2 In the event of any conflict between this Agreement and the Proposal, or any ambiguity or missing specification or instruction, the following priority is hereby established:

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

2.2.2 This Agreement.

2.2.3 The Proposal.

### **ARTICLE 3 - TERM OF AGREEMENT**

3.1 Subject to authorized adjustments, the Term of this Agreement shall be a period of twelve (12) months commencing on the effective date ("Initial Term").

3.2 Following the Initial Term, the Parties may renew this Agreement in writing on a year-to-year basis, for an additional four (4) years.

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

### **ARTICLE 4 - COMPENSATION**

4.1 During the Initial Term, Contractor shall be paid an amount not to exceed Thirty Thousand Dollars (\$30,000.00) in accordance with the Contract Documents.

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

### **ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES**

5.1 As an inducement for the City to enter into this Agreement, Contractor has represented an expertise in the provision of Services. In reliance upon these representations, the City has entered into this Agreement with Contractor for the provision of Services.

5.2 Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of Services under this Agreement. All things not expressly mentioned in this Agreement but necessary to carry out its intent are required by this Agreement, and Contractor shall perform the same as though they were specifically mentioned, described and delineated.

5.3 Contractor shall supervise and direct the work competently and efficiently, devoting such attention and applying Contractor's best skill, attention and expertise. Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of the Services. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

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

5.5 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

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

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

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

7.1 Contractor represents that:

7.1.1 No official, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the granting of this Agreement.

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

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

7.1.4 The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standards shall apply.

#### **ARTICLE 8 - DEFAULT**

8.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default.

8.2 If an event of default occurs, in the determination of the City, the City shall notify Contractor in writing ("Notice of Default"), specifying the basis for such default and shall allow Contractor five (5) days following Contractor's receipt of such Notice of Default to cure such default or to provide a mutually acceptable resolution. The City may grant an additional period of five (5) days without waiver of any of the City's rights hereunder.

8.3 The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within the time specified above. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

#### **ARTICLE 9 - NOTICES**

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

To Contractor:           The DRS Imaging Group of Florida, Inc.  
                                  Attn: John Civale  
                                  11281 Interchange Circle  
                                  Miramar, FL 33025  
                                  Telephone: (954) 538-1112  
                                  Fax: (954) 538-0717

To City:                    City of North Miami  
                                  Attn: City Manager

776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

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

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

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

#### **ARTICLE 10 - INDEMNIFICATION**

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

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

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

#### **ARTICLE 11 - INSURANCE**

11.1 Contractor shall procure and maintain at its own expense and keep in effect during the full term of this Agreement, insurance coverage meeting the requirements of the City's Risk Manager as outlined in Exhibit C.

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

**ARTICLE 12 - PUBLIC RECORDS**

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

**ARTICLE 13 - MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

The DRS Group of Florida, Inc., a Florida for-profit corporation:

Corporate Secretary or Witness:

“Contractor”:

By: Cindy Wix

By: [Signature]

Print Name: Cindy Wix

Print Name: John Connor

Date: 04/10/2012

Date: 4/10/12

ATTEST:

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

By: [Signature]  
Michael A. Etienne  
City Clerk

By: [Signature]  
Stephen E. Johnson  
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]  
Regine M. Monestime  
City Attorney