

**CITY OF NORTH MIAMI
SECOND RENEWAL TO
PROFESSIONAL SERVICES AGREEMENT
(RFP #04-10-11)**

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (“Second Amendment”) is made and entered into this ____ day of 4/9/2015, 2015, by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL (“City”) and **HCT Certified Public Accountants & Consultant, LLC**, f/k/a, **Harvey, Covington & Thomas of South Florida, LLC**, a limited liability company organized and existing under the laws of the State of Florida, having its principal office at 3816 Hollywood Boulevard, Suite 203, Hollywood, FL 33021 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on October 27, 2010, the City advertised *Request for Proposal #04-10-11 Independent Auditing Services* (“RFP”), to obtain proposals from qualified Certified Public Accounting firms to conduct financial auditing services in accordance with the conditions, terms and specifications contained in the RFP (“Services”); and

WHEREAS, the City Manager established the City’s Audit Committee (“Committee”) to review proposals and assist the City in selecting an independent Certified Public Accounting firm, in accordance with Section 218.391, Florida Statutes; and

WHEREAS, on January 4, 2011, the Committee completed its review and ranking of all the respondents and selected Contractor as the most responsive responsible provider of Services, whose qualifications, references and fee schedule demonstrated to be the most advantageous to the City; and

WHEREAS, on January 11, 2011, the City Council passed and adopted Resolution Number 2011-1, approving the selection of the Contractor and authorized the City Manager and City Attorney to negotiate and execute an agreement, in accordance with RFP requirements; and

WHEREAS, on January 26, 2011, the Parties executed an agreement for the provision of Services (“Agreement”), for a term commencing on October 1, 2010, through September 30, 2013 (“Initial Term”); and

WHEREAS, following the Initial Term, the City retained the option of renewing the Agreement in writing for an additional three (3) years, on a year-by-year basis; and

WHEREAS, on January 11, 2014, the Parties amended the Agreement allowing the City to exercise the option of the first renewal period commencing January 11, 2014 through January 10, 2015 (“First Option Period”); and

WHEREAS, the City Manager finds that entering into this Second Amendment exercising the second option to renew the Agreement for a period of one (1) year for the continued provision of required Services, is in the best interest of the City.

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

1. The Parties hereby acknowledge Contractor's merger from Harvey, Covington & Thomas of South Florida, LLC, to HCT Certified Public Accountants & Consultant, LLC, as filed with the State of Florida, Division of Corporations.

2. The Parties agree that this Second Amendment is incorporated into and made part of the Agreement dated, January 26, 2011 (attached hereto as "Exhibit A"); as amended by the First Renewal, dated January 11, 2014 (attached hereto as "Exhibit B"); and as authorized by Resolution No. R-2011-1, dated January 11, 2011 (attached hereto as "Exhibit C").

3. The Parties hereby amend the Agreement, as amended, to extend the provision of Services to the City for an additional period of one (1) year, commencing January 11, 2015, through January 10, 2016 ("Second Option Period").

4. The City shall pay Contractor the amount not to exceed One Hundred Nine Thousand Dollars (\$109,600.00), as full compensation for the provision of Services throughout the Second Option Period, in accordance with Contractor's fee schedule dated October 21, 2014 (attached hereto as Exhibit "D").

5. The City Manager shall have the right to terminate this Agreement, in his sole discretion at any time, with or without cause, upon thirty (30) days written notice to Contractor. The City shall not be liable to Contractor for any compensation, or for any consequential or incidental damages or loss of profits.

5.1 The City shall pay Contractor compensation for Services rendered up to the effective date of such termination. Contractor shall stop Services on the date specified in the written notice and agrees that termination shall not release Contractor from any obligations accruing prior to the effective date of termination.

6. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the Parties.

7. This Second Amendment shall be binding upon the Parties hereto, their successors in interest, heirs, executors, assigns and personal representatives.

8. The Contractor warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents (as defined in the Agreement, as subsequently amended) as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

9. In the event of any dispute arising under or related to this Second Amendment, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Second Amendment, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

10. All other terms of the Agreement, as subsequently amended, which have not been modified by this Second Amendment, shall remain in full force and effect.

11. This Second Amendment 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:

HCT Certified Public Accountants & Consultant, LLC, f/k/a, Harvey, Covington & Thomas of South Florida, LLC, a Florida limited liability company, **“Contractor”**:

Corporate Secretary or Witness:

DocuSigned by:
By: Ramona Sutton
3FF8AF1B5CAA4C1...
Print Name: Ramona Sutton
Date: 4/9/2015

DocuSigned by:
By: Roderick Harvey
38C8B2B71CEC427...
Print Name: Roderick Harvey
Date: 4/9/2015

ATTEST:

City of North Miami, a Florida municipal Corporation, **“City”**:

DocuSigned by:
By: [Signature]
2C7010872EE8414...
Michael A. Etienne
City Clerk

DocuSigned by:
By: Aleem Ghany
AD8C42C3AF4E44B...
Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

DocuSigned by:
By: Regine Monestime
9287BB01BC7E443...
Regine M. Monestime
City Attorney

Exhibit "A"

**CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(RFP #04-10-11)**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 26th day of January, 2011 by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **Harvey, Covington & Thomas of South Florida, LLC**, a limited liability company organized and existing under the laws of the State of Florida, having its principal office at 3816 Hollywood Boulevard, Suite 203, Hollywood, FL 33021 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on October 27, 2010, the City advertised *Request for Proposal #04-10-11, Independent Auditing Services* ("RFP") to obtain proposals from qualified Certified Public Accounting firms to conduct financial auditing services in accordance with the conditions, terms and specifications contained in the RFP ("Services"); and

WHEREAS, the City Manager established the City's Audit Committee to review proposals and assist the City in selecting an independent Certified Public Accounting firm, in accordance with Section 218.391, Florida Statutes; and

WHEREAS, on January 4, 2011, the City's Audit Committee completed its review and ranking of all respondents and selected Contractor as the most responsive and responsible provider of Services, whose qualifications, references and cost demonstrated to be the most advantageous to the City; and

WHEREAS, on January 11, 2011, the City Council approved the selection of the Contractor by Resolution and authorized the City Attorney and City Manager to negotiate and execute an agreement, in accordance with the RFP.

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 City of North Miami Request for Proposal #04-10-11, Independent Auditing Services, attached hereto by reference;

- 2.1.2 Contractor's response to the RFP ("Proposal"), attached hereto by reference;
- 2.1.3 Contractor's Fee Schedule, attached hereto as "Attachment A"; and
- 2.1.4 Any additional documents which are required to be submitted by Contractor pursuant to Contract Documents.

2.2 In the event of any conflict between the Contract Documents 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 RFP.

2.3 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the RFP prior to Contractor submitting its Proposal or the right to clarify same shall be waived.

ARTICLE 3 - TIME FOR PERFORMANCE

3.1 The initial term of this Agreement shall be three (3) years commencing on October 1, 2010, and ending on September 30, 2012 ("Initial Term").

3.2 Following the Initial Term, the City shall have the option to renew this Agreement in writing for an additional three (3) years, on a year-by-year basis.

3.3 Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed term. Failure to render Services timely shall be regarded as a material breach of this Agreement, subject to the appropriate remedies available at law.

3.4 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 For the provision of Services, Contractor shall be paid for each fiscal year, the amounts indicated in Attachment A. Total compensation for the entire term of the Agreement, including the stated options to renew, shall not exceed Six Hundred Twenty Three Thousand Dollars and no/100 cents (\$623,600.00). 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. *SIX hundred*

4.2 The City shall pay Contractor within forty-five (45) days of receipt of invoice the total shown to be due on such invoice, provided the City has accepted the Services.

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 on similar public entity auditing services. In reliance upon those representations, the City has entered into this Agreement with Contractor for the provision of Services.

5.2 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 work and shall ensure that the finished Services accurately comply with the Contract Documents, state and federal laws.

5.3 Pursuant to Contract Documents, Contractor shall comply with the City's Local Preference Code requirements by assigning no less than ten percent (10%) of the total contract amount, on an annual basis, to the firm of Arland Pierre-Canel, CPA, LLC.

5.4 Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

ARTICLE 6 - SCOPE OF SERVICES

6.1 The Contractor shall provide all required labor, supervision, materials, equipment, tools, transportation, services and expertise necessary for the completion of Services, under the terms, conditions and specifications contained in the Contract Documents.

6.2 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.

6.3 Contractor agrees and understands that: (i) any 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.

6.4 Services conducted onsite shall be performed between the hours of 8:00 am and 5:00 pm on weekdays, except for holidays observed by the City.

ARTICLE 7 - INDEPENDENT CONTRACTOR

7.1 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 8 - CONFLICTS OF INTEREST

8.1 Contractor represents and warrants to the City that it 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 award of this Agreement.

8.2 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 interest, directly or indirectly, with contractors or vendors providing professional construction 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.

ARTICLE 9 - DEFAULT

9.1 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. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within five (5) business days after receiving Notice of Default. 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 10 - CITY'S TERMINATION RIGHTS

10.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 11 - NOTICES

11.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: Harvey, Covington & Thomas, LLC
Attn: Roderick Harvey, CPA
3816 Hollywood Blvd., Suite 203

extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

14.2 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 15 - FORCE MAJEURE

15.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 16 - PUBLIC RECORDS

16.1 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 17 - MISCELLANEOUS PROVISIONS

17.1 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.

17.2 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.

17.3 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.

Hollywood, FL 33021
Phone: (904) 966-4435
Fax: (904) 962-7747

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

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

11.2 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.

11.3 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 12 - INDEMNIFICATION

12.1 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.

12.2 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 13 - WARRANTY

13.1 The Contractor warrants that Services, whether furnished by the Contractor, its subcontractors or suppliers will comply with the Contract Documents.

ARTICLE 14 - INSURANCE & BONDS

14.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured. Contractor shall not commence Services until after Contractor has obtained all of the minimum insurance described in the RFP, and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and

17.4 This Agreement constitutes 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.

17.5 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.

17.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

17.7 The 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.

17.8 The 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.

17.9 All other terms and conditions set forth in the RFP which have not been modified by this Agreement, shall remain in full force and effect.

17.10 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.

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

17.12 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: Harvey, Covington & Thomas, LLC, a Florida limited liability company:

Corporate Secretary or Witness: "Contractor"

By: _____ By: [Signature] CPA

Print Name: _____ Print Name: FREDERICK HARVEY CPA, LVA

Title: _____ Title: PARTNER

Date: _____ Date: 1/26/2011

ATTEST: City of North Miami, a Florida municipal Corporation: "City"

By: [Signature]
Jacquie Vieira
Deputy City Clerk

By: [Signature]
Russell Benford
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature] 1/20/11
V. Lynn Whitfield
City Attorney