

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“**Agreement**”) is entered into by and between the City of Corpus Christi, a municipal corporation (“**City**”), and MCC Innovations, (“**Consultant**”) effective for all purposes upon execution by the City Manager or City Manager’s designee.

### **I. SERVICES TO BE PERFORMED.**

The Consultant agrees to provide professional services to the City of Corpus Christi as described in attached proposal, attached as Exhibit A.

The parties agree performance of the work shall commence upon authorization to proceed by the City Contract Administrator. The Director of Municipal Information Systems is designated as the City Contract Administrator responsible for all phases of performance and operations under this Agreement, including authorizations for payment. All notices or communications regarding this Agreement shall be directed to the Contract Administrator.

**II. FEE FOR SERVICES AND MILESTONE PAYMENTS.** Total cost for all services provided by Consultant and all expenses incurred by Consultant under this Agreement for the first year of this Agreement shall not exceed \$99,817.92 based upon fees as set forth in Exhibit A unless authorized by written amendment to this Agreement. Contract Administrator and Consultant shall identify mutually agreed upon project milestones at which time payments shall be due. Payment shall be made within 30 days from receipt of invoice after Contract Administrator’s acceptance of Consultant’s successful completion of each project milestone. Fees for additional year of services are described as follows: \$40,737.74 for annual maintenance.

### **III. EFFECTIVE DATE, TERM, TERMINATION, HIERARCHY OF DOCUMENTS**

- A. This agreement takes effect upon execution by the City Manager or his designee (“Effective Date”).
- B. The term of this agreement is one year from the Effective date unless sooner terminated in accordance with Subsection C below. This agreement may be extended for up to 3 additional one year terms upon the written approval of the Contract Administrator, at the same terms and conditions.
- C. The City may, at any time, with or without cause, terminate this Agreement upon sixty (60) days written notice to the Consultant. Upon termination of this Agreement, all finished or unfinished documents, data, studies, or reports prepared or stored by the Consultant for the City, at the option of the City, will be delivered to the City.
- D. In the event of any conflicting terms between this Agreement and Consultant’s Proposal, the terms in this Agreement control.

**IV. APPROPRIATION OF FUNDS.** All parties recognize that the continuation of any contract after the close of any fiscal year of City, which fiscal year ends on July 31 of each year, shall be subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. City does not represent that the budget item will be actually adopted, said determination being within the sole discretion of the City Council at the time of adoption of such budget.

**V. ASSIGNABILITY.** Neither party may assign, transfer, or delegate any of his obligations or duties in this Contract to any other person without the prior written consent of the other party.

**VI. INDEPENDENT CONTRACTOR.** Consultant shall perform all services as an independent contractor and shall furnish such services in its own manner and method, and under no circumstances or conditions shall an agent, servant, or employee of the Consultant be considered an employee of the City.

**VII. SUBCONTRACTORS.** Consultant may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, Consultant must obtain prior written approval from the City Contract Administrator. In using subcontractors, Consultant agrees to be responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Consultant. All requirements set forth as part of this Agreement shall be applicable to all subcontractors and their employees to the same extent as if the Consultant and its employees had performed the services. Any subcontractor utilized by Consultant shall be responsibility of Consultant to indemnify as described in Section X below and insure at same levels as required in attached insurance exhibit.

**VIII. VENUE AND APPLICABLE LAW.** Consultant shall comply with all applicable Federal, State and local laws. The applicable law for any legal disputes arising out of this Agreement shall be the law of Texas and such forum and venue for such disputes shall be the appropriate district, county, or justice court in and for Nueces County, Texas.

**IX. WAIVER.** No waiver of any breach of any term, or condition of this Agreement, shall be construed to waive any subsequent breach of the same.

**X. INDEMNIFICATION.** Subject to Consultant's limit of liability being set at one million dollars, Consultant agrees to indemnify and hold City, its officers, employees or agents ("Indemnitees") harmless of, from, and against all claims, lawsuits, demands, actions, damages, losses, costs, liabilities, and expenses, including court costs and attorney fees, for or on account of any injury or damage to person or property to the extent any such damage or injury may be incident to, arise out of, or be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the performance of this Agreement; an act or omission, negligence or misconduct on the part of Consultant, or any of its agents, servants, contractors, subcontractors, or employees in performance of this Agreement.

Subject to Consultant's limit of liability being set at one million dollars, Consultant agrees to indemnify and save harmless City, its agents, servants, and employees, ("Indemnitees"), from any and all liabilities, losses, damages, or expenses, including court costs and attorney fees, resulting from the negligence or acts or omissions of Consultant, its employees, officers, agents, contractors, or subcontractors while in

performance of this Agreement.

**XI. INSURANCE.** Consultant agrees to provide insurance in accordance with the attached exhibit B.

**XII. AMENDMENTS OR MODIFICATIONS.** No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.

**XIII. NOTICES.** Notices provided shall be in writing and mailed via first class US Mail, or overnight mail delivery service, addressed as follows:

On behalf of the City:                   City of Corpus Christi  
                                                          Attn: Director of Municipal Information Systems  
                                                          P.O. Box 9277  
                                                          Corpus Christi, TX 78469-9277

On behalf of the  
Consultant:                                   MCC Innovations  
                                                          Attn: Donny Barstow  
                                                          President  
                                                          PO Box 2235  
                                                          Tallahassee, FL 32316  
                                                          \_\_\_\_\_  
                                                          \_\_\_\_\_

**XIV. DISCLOSURE OF INTERESTS.** Consultant shall complete the attached Disclosure of Interest form.

**XV. CAPTIONS.** The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

**CITY OF CORPUS CHRISTI**

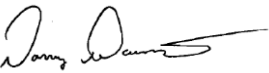
\_\_\_\_\_  
**Ronald L. Olson**  
**City Manager**

\_\_\_\_\_  
**Date**

**APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2012**

**By: \_\_\_\_\_**  
**Assistant City Attorney**  
**For City Attorney**

**CONSULTANT: MCC Innovations**

By: 

Name: Donny Barstow

Title: President

Date: 11/16/2012

Exhibit A

{insert copy of Consultant's proposal}

## EXHIBIT B

**INSURANCE REQUIREMENTS**I. MCC Innovations (“MCCI”) LIABILITY INSURANCE

- A. MCCI must not commence work under this agreement until all insurance required herein has been obtained and such insurance has been approved by the City. MCCI must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.
- B. MCCI must furnish to the City’s Risk Manager two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by insurance company(s) acceptable to the City’s Risk Manager. The City must be named as an additional insured for the General liability policy and a waiver of subrogation is required for the General Liability and Workers Compensation policies.

<b>TYPE OF INSURANCE</b>	<b>MINIMUM INSURANCE COVERAGE</b>
<b>30-Day written notice of cancellation required by policy endorsements for all coverages</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury – Advertising Injury	\$1,000,000 COMBINED SINGLE LIMIT – \$2,000,000 Aggregate
AUTOMOBILE LIABILITY including: 1. Owned Vehicles 2. Hired & non-Owned vehicles	\$1,000,000 COMBINED SINGLE LIMIT
Electronic Errors and Omissions	\$1,000,000
Bailee’s Customers Goods Coverage	\$200,000
WORKERS’ COMPENSATION	Applicable while on City property WHICH COMPLIES WITH THE TEXAS WORKERS’ COMPENSATION ACT AND SECTION II OF THIS EXHIBIT
EMPLOYERS’ LIABILITY	500,000/500,000/500,000

- |  |  |
|--|--|
|  |  |
|--|--|
- C. In the event of accidents of any kind, the MCCI must furnish the Risk Manager with copies of all reports of such accidents related to this agreement within ten (10) days of accident.

## II. ADDITIONAL REQUIREMENTS

- A. MCCI must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met. If coverage not written in accordance with Texas law, All Other States (AOS) endorsement must be indicated on the certificate of insurance.
- B. MCCI's financial integrity is of interest to the City; therefore, subject to MCCI's right to maintain reasonable deductibles in such amounts as are approved by the City, MCCI shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at MCCI's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.
- C. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). MCCI shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. MCCI shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Management  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
(361) 826-4555- Fax #

- D. **MCCI agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
  - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, MCCI shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend MCCI's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- F. In addition to any other remedies the City may have upon MCCI's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order MCCI to stop work hereunder, and/or withhold any payment(s) which become due to MCCI hereunder until MCCI demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which MCCI may be held responsible for payments of damages to persons or property resulting from MCCI's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that MCCI's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.



**CITY OF CORPUS CHRISTI  
DISCLOSURE OF INTEREST**

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for definitions.

COMPANY NAME : MCC Innovations

P. O. BOX: 2235

STREET: n/a CITY: Tallahassee ZIP: 32316

FIRM IS: 1. Corporation ( x ) 2. Partnership ( ) 3. Sole Owner ( )  
4. Association ( ) 5. Other ( )

**DISCLOSURE QUESTIONS**

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name Job Title and City Department (if known)  
\_\_\_\_ N/A \_\_\_\_\_  
\_\_\_\_ N/A \_\_\_\_\_

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name Title  
\_\_\_\_ N/A \_\_\_\_\_ N/A \_\_\_\_\_

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name Board, Commission, or Committee  
\_\_\_\_ N/A \_\_\_\_\_

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Consultant  
\_\_\_\_ Donny Barstow \_\_\_\_\_

**CERTIFICATE**

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: \_\_\_\_ Donny Barstow \_\_\_\_ Title: \_\_\_\_ President \_\_\_\_  
(Type or Print)

Signature of Certifying Person:  Date: \_\_\_\_ 11/16/2012 \_\_\_\_

## DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- c. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- d. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- e. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity.  
 Constructively held  refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements.
- f. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.