

RESOLUTION No. 16-131

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A THIRD AMENDMENT TO THE CURRENT TROLLEY PURCHASE AGREEMENT BETWEEN THE CITY AND NATIONAL BUS SALES & LEASING, INC. FOR THE PURCHASE OF ONE ADDITIONAL TROLLEY AND CAMERA HARDWARE IN THE AMOUNT OF \$176,832.00, INCREASING THE TOTAL NOT TO EXCEED AMOUNT OF \$1,208,747.40; AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 12th, 2013, upon City Council approval, the City of Doral (the “City”) entered into a five-year agreement with National Bus Sales & Leasing, Inc. (“National”), for the purchase of Replica Trolley Buses and Preventative Maintenance Equipment in an amount not to exceed of \$625,151.06 (the “Agreement”); and

WHEREAS, on January 15th, 2014, the City Council authorized the City Manager to amend the agreement with National, for the purchase of Replica Trolley Buses and Preventative Maintenance in an amount not to exceed \$679,387.00 to complete the purchase of an additional fourth trolley (the “First Amendment”); and

WHEREAS, on January 13th, 2015, the City Council authorized the City Manager to execute a second amendment to the agreement with National, for the purchase of Replica Trolley Buses and Preventative Maintenance in an amount not to exceed \$1,031,915.40 for the purchase of two (2) trolleys and supporting camera hardware (the “Second Amendment”); and

WHEREAS, the City desires to purchase one (1) additional trolley, which will allow one spare trolley per Doral Trolley Route, better handling the increase in ridership demand and making the system more reliable; and

WHEREAS, staff has recommended that the City Council approve a third amendment to the Agreement for the purchase of one (1) additional trolley and supporting camera hardware and to increase the contract amount by \$176,832.00 with a total not to exceed amount of \$1,208,747.40 (the “Third Amendment”).

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

Section 2. Approval of Third Amendment. The Third Amendment to the Agreement between the City and National for the purchase of one (1) additional trolley, supporting camera hardware, and preventative maintenance, in an the amount of \$176,832.00, increasing the total contract not to exceed amount of \$1,208,747.40, is hereby approved.

Section 3. Authorization. The City Manager is hereby authorized to execute the Third Amendment, in substantially the form attached hereto as Exhibit “A”, which is incorporated herein and made a part hereof by this reference, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legal sufficiency by the City Attorney, and to expend budgeted funds in furtherance hereof.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Councilmember Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Absent/Excused
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED this 8 day of June, 2016.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE USE
OF THE CITY OF DORAL



WEISS, SEROTA, HELFMAN, COLE, & BIERMAN, PL
CITY ATTORNEY

EXHIBIT “A”

A CONTRACT BETWEEN CITY OF DORAL, Doral, Florida AND NATIONAL BUS SALES & LEASING, INC.

This Contract is made and entered into by the CITY OF DORAL, a Florida Municipal Corporation hereinafter referred to as CITY, having its principal place of business at 8401 NW 53 Terrace, Doral Florida 33166, AND, NATIONAL BUS SALES & LEASING, INC. hereinafter referred to as the CONTRACTOR, having its principal place of business at 800 Pickens Drive Extension, Marietta, GA 30062.

ARTICLE 1: SCOPE OF SERVICES

The parties have entered into a TROLLEY AND TRANSIT Contract to become effective as of September 20, 2013, and to continue through September 20, 2018 (the "Contract"), subject to extension upon mutual agreement of the CONTRACTOR and CITY. CITY enters into the Contract for the purchase of TROLLEY VEHICLES AND RELATED PREVENTIVE MAINTENANCE EQUIPMENT offered by the CONTRACTOR. The CONTRACTOR agrees to sell TROLLEY(S) AND TRANSIT to the CITY through this contract.

ARTICLE 2: THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A (Price Schedule)
2. General Terms and Conditions
3. RFP No:2013-11 Purchase & Delivery of Trolley Replica Bus & Preventive Maintenance Equipment
4. CONTRACTOR's Response to RFP No: 2013-11, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: COMPENSATION AND PAYMENT

The CONTRACTOR shall be compensated in the following manner:

On a time and material/expense basis to complete the Scope of Services, provided, however, that total payments to Consultant shall not exceed \$625,151.06, without the prior written approval of the City. Consultant shall submit its bills in arrears upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis in a form approved by the City. The bills shall show or include: (i) the task(s) performed; (ii) the time devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

The CITY shall pay CONTRACTOR in accordance with the Florida Prompt Payment Act.

If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the CONTRACTOR the undisputed portion of the invoice. Upon written request of the Finance Director, the CONTRACTOR shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

ARTICLE 4: LEGAL AUTHORITY

CONTRACTOR and CITY warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 5: APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 6: INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of CITY or CONTRACTOR. No provision of this Contract or act of CITY in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of CITY, the State of Florida or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in five (5) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

WITNESSES:

[Signature]
[Signature]

CONTRACTOR:

National Bus Sales and Leasing, Inc.

BY:

[Signature]

NAME:

John T. Smith

TITLE:

Chairman

OWNER:

City of Doral

BY:

[Signature]

NAME:

Joe CAROLLO

TITLE:

CITY MANAGER

AUTHENTICATION:

BY:

[Signature]

NAME:

Barbara Herrera

TITLE:

CITY CLERK

APPROVED AS TO FORM:

BY:

[Signature]

NAME:

John Stein

TITLE:

CITY ATTORNEY

ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to CITY. CITY reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. CITY shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to CITY under this Contract. CITY, through its staff or its designated public accounting firm, the State of Florida, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that CITY'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9: REPORTING REQUIREMENTS

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If CONTRACTOR fails to submit to CITY in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE

If CONTRACTOR, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Florida, and offers the same or substantially the same products/services offered to CITY on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to CITY, CONTRACTOR shall notify CITY within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to CITY. CITY shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify CITY in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. CITY, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between CITY and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to CITY.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. *EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, or contractor, which are not within bidder's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

ARTICLE 11: NONDISCRIMINATION

During the term of this Agreement, CONTRACTOR shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

ARTICLE 12: ATTORNEYS' FEES AND WAIVER OF JURY TRIAL

In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

ARTICLE 13: SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

ARTICLE 14: DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the City Manager or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the City Manager or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the City Manager. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the City Manager after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the City Manager to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with CITY'S final decision.

ARTICLE 15: NOTICES/AUTHORIZED REPRESENTATIVES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the CITY:

Joe Carollo, City Manager
City of Doral
8401 NW 53 Terrace
Doral, Florida 33166

With a Copy to:

John Herin, Jr., Esq
City Attorney
GrayRobinson, P.A.
401 East Las Olas Blvd., Suite 1850
Ft. Lauderdale, Florida 33301

For The CONTRACTOR:

ARTICLE 16: LIMITATION OF CONTRACTOR'S LIABILITY

CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify CITY described in Article 17, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to CITY any amounts determined by CITY, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 17: LIMIT OF CITY'S LIABILITY AND INDEMNIFICATION OF CITY

CITY'S liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will CITY be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR agrees, to the extent permitted by law, to defend and hold harmless CITY, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify CITY of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

ARTICLE 18: ENTIRE AGREEMENT/MODIFICATION/AMENDMENT

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

ARTICLE 19: TERMINATION FOR CAUSE

CITY may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that CITY shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then CITY may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to CITY any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

ARTICLE 20: TERMINATION FOR CONVENIENCE

Either CITY or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from CITY for services actually performed; to the extent said services are satisfactory to CITY.

ARTICLE 21: OWNERSHIP AND ACCESS TO RECORDS AND AUDITS

All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the CONTRACTOR providing services to the CITY under this Agreement shall be the property of the CITY.

ARTICLE 22: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by CITY, the State of Florida, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify CITY of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 23: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Florida. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Miami Dade County, Florida. Disputes between CITY and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of Florida.

ARTICLE 24: LIQUIDATED DAMAGES

Liquidated damages terms will be in place between CONTRACTOR and CITY at the time CITY'S purchase order is placed.

ARTICLE 25: PAYMENT & PERFORMANCE BONDS

CONTRACTOR agrees to provide a Payment & Performance Bond at the request of the CITY within ten (10) days of request. Failure of CONTRACTOR to provide such bonds within ten (10) days of request may constitute a total breach of contract and shall be cause for cancellation of the order at CITY'S sole discretion.

ARTICLE 26: WAIVER

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

ARTICLE 27: SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

ARTICLE 28: CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify CITY, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. CITY shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.