

RESOLUTION NO. R-2012-29

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND BLACK & VEATCH CORPORATION TO INCREASE THE CONTRACT AMOUNT FROM SIXTY-ONE THOUSAND EIGHT HUNDRED FIFTY DOLLARS AND NO CENTS (\$61,850.00), TO TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$225,000.00), FOR WATER AND SEWER RATES AND FEES ANALYSIS REVIEW AND OTHER RELATED SERVICES; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, on July 22, 2011, the City of North Miami ("City") entered into a Professional Services Agreement (Program Development Services - Piggyback MDC Contract #503) ("Agreement") with Black & Veatch Corporation ("Contractor") to review existing rates and fees to identify recovery requirements for the wholesale and retail water, in accordance with the terms, conditions, requirements and specifications contained in the *Request for Proposals for Water and Sewer Rates and Fees Analysis EPP-RFP No. 530* ("Services"); and

WHEREAS, under the terms of the Agreement, the Contractor was to be paid an amount not to exceed Sixty-One Thousand Eight Hundred Fifty Dollars and No Cents (\$61,850.00), as compensation for the provision of Services; and

WHEREAS, the City desires to amend the Agreement for additional Task Orders to include Services in support of pre-construction activities required by the Florida Department of Environmental Protection (FDEP) State Revolving Fund (SRF) program; and

WHEREAS, the required additional Services will increase the initial Agreement amount to an amount not to exceed Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00), with a completion date of September 30, 2012; and

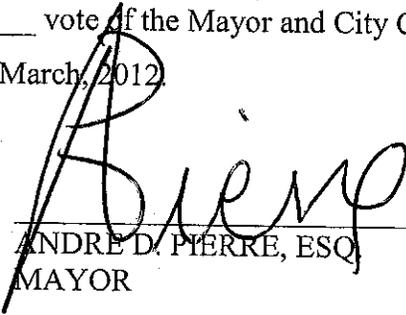
WHEREAS, the City Administration respectfully requests that the Mayor and City Council approve the amendment to Professional Services Agreement, in order to accomplish the additional work required by the City.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authority of City Manager. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute an amendment to Professional Services Agreement, in substantially the attached form, between the City of North Miami and Black & Veatch Corporation to increase the Contract amount from Sixty-One Thousand Eight Hundred Fifty Dollars and No Cents (\$61,850.00), to Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00), for water and sewer rates and fees analysis review and other related services

Section 2. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 13 day of March, 2012.



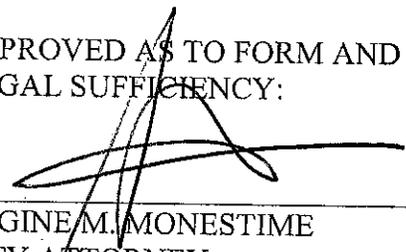
ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:



MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Mayor Pierre

Seconded by: Councilman Galvin

Vote:

Mayor Andre D. Pierre, Esq.	<u>X</u>	(Yes)	<u> </u>	(No)
Vice Mayor Jean R. Marcellus	<u>X</u>	(Yes)	<u> </u>	(No)
Councilperson Michael R. Blynn, Esq.	<u>X</u>	(Yes)	<u> </u>	(No)
Councilperson Scott Galvin	<u>X</u>	(Yes)	<u> </u>	(No)
Councilperson Marie Erlande Steril	<u>X</u>	(Yes)	<u> </u>	(No)

CITY OF NORTH MIAMI
AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT ("Amendment") is entered into this ____ day of _____, 2012, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 N.E. 125th Street, North Miami, FL 33161 ("City"), and **Black & Veatch Corporation**, a foreign for-profit corporation registered and authorized to do business in the State of Florida, having its principal office at 8400 Ward Parkway, Kansas City, MO 64114 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on July 22, 2011, the City of North Miami ("City") entered into a Professional Services Agreement (Program Development Services – Piggyback MDC Contract #503) ("Agreement") with Black & Veatch Corporation ("Contractor") to review existing rates and fees to identify recovery requirements for the wholesale and retail water, in accordance with the terms, conditions, requirements and specifications contained in the *Request for Proposals for Water and Sewer Rates and Fees Analysis EPP-RFP No. 530* ("Services"); and

WHEREAS, under the terms of the Agreement, the Contractor was to be paid an amount not to exceed Sixty-One Thousand Eight Hundred Fifty and no/100 Dollars (\$61,850.00), as compensation for the provision of Services; and

WHEREAS, the City desires to amend the Agreement for additional Task Orders to include Services in support of pre-construction activities required by the Florida Department of Environmental Protection (FDEP) State Revolving Fund (SRF) program; and

WHEREAS, the required additional Services will increase the initial Agreement amount to an amount not to exceed Two Hundred Twenty-Five Thousand Dollars and no/100 (\$225,000.00), with a completion date of September 30, 2012; and

WHEREAS, on March 13, 2012, the Mayor and City Council passed a Resolution authorizing the City Manager to execute this Amendment with Contractor for the provision of Services.

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:

1. The Parties agree that this Amendment is incorporated into and made part of the Agreement executed by the Parties on July 22, 2012, attached hereto as Exhibit A.
2. Term of Agreement. The Parties hereby amend Article 3.1 of Agreement to read as: "Subject to authorized adjustments, the Term of Agreement shall expire on September 30, 2012."

3. Compensation. The Parties hereby amend Article 4.1 of the Agreement to increase the compensation amount from Sixty-One Thousand Eight Hundred Fifty Dollars (\$61,850.00) to an amount not to exceed Two Hundred Twenty-Five Thousand Dollars (\$225,000.00).

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

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

6. All other terms of the Agreement which have not been modified by this Amendment, shall remain in full force and effect.

7. This 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:

Corporate Secretary or Witness:

Black & Veatch Corporation, a foreign for-profit corporation:
"Contractor"

By: _____

By: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

ATTEST:

City of North Miami, a Florida municipal corporation: "City"

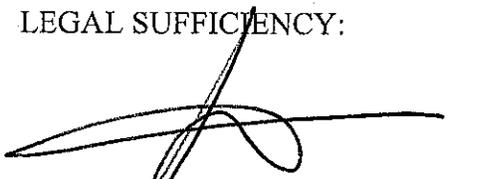
By: _____

Michael A. Etienne
City Clerk

By: _____

Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Regine M. Monestime
City Attorney

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(Program Development Services – Piggyback MDC Contract #530)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 22nd day of July, 2011 by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125th Street, North Miami, FL 33161 ("City") and **Black & Veatch Corporation**, a foreign for-profit corporation registered and authorized to do business in the State of Florida, having its principal office at 8400 Ward Parkway, Kansas City, MO 64114 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on or about August 16, 2006, Miami-Dade County, Florida ("County"), issued *Request For Proposals For Water and Sewer Rates and Fees Analysis EPP-RFP No. 530* ("RFP"), requesting solicitations from qualified contractors to review existing rates and fees to identify recovery requirements for the wholesale and retail water, in accordance with the terms, conditions, requirements and specifications contained in the RFP ("Services"); and

WHEREAS, on the Contractor submitted a written proposal in response to the RFP and was competitively selected as having established the criteria, qualifications, and references most advantageous to the County; and

WHEREAS, on March 29, 2007, the County entered into an agreement with Contractor for the provision of Services ("County Contract"); and

WHEREAS, on March 25, 2011, the County exercised its option to extend the County Contract with Contractor from March 28, 2011 through September 28, 2011, to continue to provide Services to the County; and

WHEREAS, on October 23, 2007, the Mayor and City Council of the City of North Miami, adopted Ordinance 1244, which authorizes the City Manager to approve the purchase of supplies, goods and/or services from current contracts of other governmental entities ("piggyback"), such as Miami-Dade County; and

WHEREAS, Contractor is willing to provide Services to the City with the same favorable rate, skill, knowledge and diligence the Contractor is providing to the County; and

WHEREAS, the City Manager has determined that it is in the best interests of the City to piggyback the County Agreement between the County and Contractor for the provision of Services to the City.

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, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 Miami-Dade County *Request For Proposals For Water and Sewer Rates and Fees Analysis EPP-RFP No. 530*, attached hereto by reference;

2.1.2 Miami-Dade County agreement with Black & Veatch Corporation, dated March 29, 2007, for the provision of Services, attached hereto as Exhibit A;

2.1.3 Miami-Dade County option to extend agreement with Black & Veatch Corporation, dated March 25, 2011, attached hereto as Exhibit B;

2.1.4 Contractor's Task Orders with Scope of Work to the City, dated May 25, 2011 ("Proposals"), attached hereto as Composite Exhibit C;

2.1.5 Any additional documents which are required to be submitted in the provision of Services.

ARTICLE 3 - TERM OF AGREEMENT

3.1 Subject to authorized adjustments, the Term of Agreement shall be Two Hundred Seventy (270) days from the date the Notice to Proceed is issued by the City.

3.2 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.

3.3 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 Contractor shall be paid an amount not to exceed Sixty One Thousand Eight Hundred Fifty and no/100 Dollars (\$61,850.00), as compensation for the provision of Services. Payment will be made in accordance with the terms of the RFP.

4.2 Funding for this Agreement is contingent upon the City's 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 - SCOPE OF SERVICES

5.1 Contractor shall provide all labor, supervision, materials, equipment, tools, services and expertise necessary for the completion of Services, in accordance to the special terms and conditions specified in the Contract Documents.

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

5.3 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.

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.

6.2 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 7 - CONFLICTS OF INTEREST

7.1 The 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.

7.2 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 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 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. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within ten (10) 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 9 - CITY'S TERMINATION RIGHTS

9.1 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 10- NOTICES

10.1 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: Black & Veatch Corporation
 Attn: Robert Chambers, Senior Consultant
 205 South Orange Avenue, Suite 500
 Orlando, FL 32801
 Phone: (407) 419-3574
 Fax: (407) 419-3501

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

10.2 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.

10.3 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 11 - PUBLIC RECORDS

11.1 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 12 - INDEMNIFICATION

12.1 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 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.

12.3 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 13 - INSURANCE

13.1 Prior to commencing Services, the Contractor shall submit certificates of insurance evidencing the required coverage under the Contract Documents and specifically providing that the City is an additional named insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

ARTICLE 14 - FORCE MAJEURE

14.1 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 15 - MISCELLANEOUS PROVISIONS

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

15.7 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.

15.8 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.

15.9 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.

15.10 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.

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

15.12 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.

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

15.14 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.

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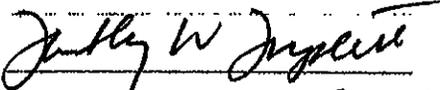
IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Black & Veatch Corporation, a foreign for-profit corporation:

Corporate Secretary or Witness:

"Contractor"

By: 

By: 

Print Name: Timothy W. Triplett

Print Name: Thomas R. Peterson

Title: Exec VP & Secretary

Title: Vice President

Date: 7-27-11

Date: 07/22/2011

gr, ms Approved by Legal(Boltz/Grimaldi) 07/22/2011.
Approved by PM(Bryant) e-mail 07/22/2011.

ATTEST:

City of North Miami, a Florida municipal corporation: "City"

By: 
Michael A. Etienne
City Clerk

By: 
Russell Benford
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
Lynn Whitfield
City Attorney